

# **Law № (188) of the year 1959**

## **Personal Status Law<sup>1</sup> and amendments**

In the name of the people,  
The Sovereignty Council,  
Following the reading of the Temporary Constitution and according to what was proposed by the Minister of Justice and agreed upon by the Cabinet,  
The following law was approved:

### **General provisions**

#### **Article 1**

- 1- The legislative texts in this law apply to all the issues discussed in these texts in letter and spirit.
- 2- If there is no applicable legislative text, the judgment shall be adjudicated in accordance with the Islamic Shari'a principles that are most relevant to this law.
- 3- Courts find guidance in all of this in the stipulations adopted by the judiciary and the Islamic jurisprudence (*Fiqh*) in Iraq and other Islamic countries where laws are close to Iraqi ones.

#### **Article 2**

- 1- The provisions of this law apply to all Iraqis except for those who are exempted by virtue of a special law.
- 2- In case of a conflict between laws due to location, the provisions of articles 19, 20, 21, 22, 23 and 24 of the Iraqi Civil Code shall be applied.

### **Chapter 1 – Marriage**

#### **Section 1 – Marriage and Betrothal**

#### **Article 3**

- 1- Marriage is a contract between a man and a woman who is lawfully permissible to him, the purpose of which is to establish a bond for a mutual life and procreate children.
- 2- If the marriage contract has been initiated, the two parties shall abide by the provisions incumbent upon them at the time of its initiation.
- 3- The promise of marriage, the recital of *Al-Fatiha* (the first Surah of the Holy Quran) and the betrothal are not considered as a contract.

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<sup>1</sup> Law № (188) of the year 1959 was published in the Iraqi official gazette (Alwaqai Aliraqiya), issue № 280 dated December 30, 1959.

- 4- Marrying more than one woman is not allowed except with the authorization of the *qadi* (judge). Granting this authorization is dependant on the fulfillment of the following two conditions:
  - a- The husband should have the financial capacity to provide for more than one wife<sup>2</sup>.
  - b- There is a legitimate interest.
- 5- If justice between wives is feared, polygamy may not be allowed. The issue would then be left to the judge's determination.
- 6- Each person who concludes a marriage contract with more than one wife, contrary to the stipulations of paragraphs 4 and 5, shall be sentenced to no more than one year of imprisonment or charged with a fine not exceeding 100 Dinars or both.
- 7- Exception from the provisions of paragraphs 4 and 5 of this article: marriage to more than one woman is permissible when the prospective wife is a widow<sup>3</sup>.

## **Section 2 – Marriage Pillars and Conditions**

### **Article 4**

A marriage contract is initiated by an offer expressed by one of the two parties to the contract – either verbally or customarily - and the acceptance of the other party with the agent (*wakil*) acting in his place.

### **Article 5**

A marriage contract is valid if the two parties to the contract, or whoever acting in their places, meet the legal and lawful conditions.

### **Article 6**

- 1- A marriage contract will not be initiated if one of the conditions of validity stated below is missing:
  - a- The offer and acceptance must be done in one sitting.
  - b- Each party to the contract must listen to the other's words and understand clearly that what is intended is marriage.
  - c- The second party must accept the offer of the first party.
  - d- Two witnesses having the qualification of legal competence must bear witness to the marriage contract.
  - e- The validity of the contract must not be linked to a condition

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<sup>2</sup> Taking back a wife (after having pronounced divorce upon her) is not considered as a marriage to more than one woman for the purposes of paragraphs 4 and 5 of article 3 of this law, if the husband had married another woman before taking back his wife. This was pronounced under resolution № 147 promulgated by the Revolutionary Command Council dated January 2, 1982. Besides, the husband was exempted from the condition of getting the approval of his district in what concerns taking back his wife, if the laws regulating the marriage usually require him to get such approval before getting married.

<sup>3</sup> Paragraph 7 was added at the end of article 3 by virtue of the sixth amendment law № 189 of the year 1980.

- f- If the prospective husband is absent, he shall write to the one he wants to marry. The latter should read what he wrote or read it to two witnesses and they should bear witness that she accepts to marry him.
- 2- The legitimate conditions stipulated in the marriage contract must be fulfilled.
- 3- The wife has the right to revoke the contract when the husband fails to fulfill the conditions he agreed upon in the marriage contract.

### **Section 3 – Validity**

#### **Article 7**

- 1- In order for the marriage to be valid, the two parties to the contract should be sane and have reached 18 years of age<sup>4</sup>.
- 2- The judge can authorize the marriage of a mentally ill person if it was confirmed in a medical report that his marriage entails no harm to society and that it is in his personal interest, provided that the other person accepts the marriage expressly.

#### **Article 8**

- 1- If a 15-year-old person asks to be married, the judge can authorize his marriage if the eligibility and physical ability of the person in question was proven to him, after obtaining the approval of his legal guardian. If the guardian abstains from responding, the judge calls upon him to state his answer during a defined period. Thus, if the guardian does not object or if he submits an objection that is unworthy of consideration, the judge shall proceed to authorizing the marriage.
- 2- The judge can authorize the marriage of a 15-year-old person if he sees in it an urgent necessity. Giving such authorization is also conditional upon the attainment of legal puberty and physical ability<sup>5</sup>.

#### **Article 9**

- 1- No relative or non-relative has the right to force marriage on any person, whether male or female, without their consent. The contract of a forced marriage is considered void if the marriage is not yet consummated. Moreover, none of the relatives or other people has the right to prevent whoever is eligible for marriage from being married by virtue of the provisions of this marriage law.
- 2- A first degree relative who breaches the provisions of paragraph 1 of this article shall be sentenced to no more than three years imprisonment and charged with a fine of a specified amount. If the person who breaches this

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<sup>4</sup> The text of paragraph 1 of article 7 was repealed and replaced by the current text by virtue of the second amendment law № 21 of the year 1978.

<sup>5</sup> The text of article 8 was repealed and replaced by the current text by virtue of the second amendment law № 21 of the year 1978. Then it was decided that paragraph 1 falls within the said article and a second paragraph was added to it by virtue of the 12<sup>th</sup> amendment law № 90 of the year 1987.

provision is not a first degree relative, he shall be sentenced to an imprisonment term varying from a minimum of three years to a maximum of ten years.

- 3- The Shari'a Court or the Personal Status Court must notify the investigation authorities of any violation of the provisions of paragraph 1 of this article so that they take legal action against the person in question. The court is entitled to hold him in custody to ensure his appearance before the said authorities. Furthermore, the person who was subject to coercion or prevention has the right to refer directly to the investigation authorities concerning this matter<sup>6</sup>.

#### **Section 4 – Registering the Marriage Contract**

##### **Article 10**

The marriage contract should be registered in a special record in the competent court without paying any fees, according to the following conditions:

- 1- Submitting a statement showing the identity of the two parties to the contract, their age, the amount of the dowry, and the absence of any legal impediment to the marriage. This document must be signed by the two contracting parties and certified by the *Mukhtar* (mayor) of the district or the village, or by two revered figures of the district's citizens.
- 2- The document must be supplemented by a medical report confirming that the two spouses in question are free from communicable diseases and health impediments, in addition to other documents required by law.
- 3- The content of the document must be written on the register and signed by the two parties to the contract, through a written signature or a thumbprint, in the presence of the judge who then certifies the marriage and provides the spouses with the marriage evidence (*Hujja*).
- 4- The content of the documents duly registered is to be put into effect. In addition, they are applicable in what concerns the dowry as long as they are not subject to an objection before the competent courts.
- 5- Any man who concludes his marriage contract outside the court is punished with a period of imprisonment that is no less than six months and no more than a year, or charged with a fine that is no less than three hundred Dinars and no more than a thousand Dinars. If he concludes another marriage outside the court when he is already married, the imprisonment penalty shall range between a minimum of three years and a maximum of five years<sup>7</sup>.

##### **Article 11**

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<sup>6</sup> The text of article 9 was repealed and replaced by the current text by virtue of the second amendment law № 21 of the year 1978.

<sup>7</sup> Paragraph 5 was added at the end of article 10 by virtue of the second amendment law № 21 of the year 1978 and entered into effect thirty days after its publication.

- 1- If a man avows to a woman that she is his wife and there is no legal or lawful impediment to the marriage and she believes him, her marriage to him is validated by his avowal.
- 2- If a woman avows that she has married a man and he believes her as she is alive and there is no legal or lawful impediment to the marriage, their marriage would be validated. But if he admits believing her only after her death, marriage between them will not be validated.

This document is a translation done by the American Bar Association Iraq Legal Development Project.  
It is not an officially sanctioned translation.

**Chapter 2 – Marriage**  
**Section 1 – Forbidden Women & Marriage to Women Belonging to the People of the Book**

**Article 12**

In order for the marriage to be sound, the woman must not be lawfully forbidden to the man who wants to marry her.

**Article 13**

Prohibition of marriage is divided into two parts: permanent and temporary. While permanent restrictions are kinship, affinity and breastfeeding kinship; temporary ones are marriage to more than four wives, adherence to a non-divine religion, divorce effected by three repudiations, the dependence of someone's right on the marriage or *iddat* (the waiting period following a divorce), and the marriage to one of the forbidden while being already married to another<sup>8</sup>.

**Article 14**

- 1- A man is forbidden from marrying, amongst relatives, his mother and grandmother, however high; his daughter, his son's daughter and his daughter's daughter, however low. Forbidden to him as well are his sister, the daughter of his sister, and the daughter of his brother, however low; his paternal aunt and the aunt of his paternal ascendants, and his maternal aunt and the aunt of his maternal ascendants.
- 2- A woman is forbidden from marrying men from the same category of kinship mentioned above.

**Article 15**

A man is forbidden from marrying the step daughter born to the wife with whom his marriage was consummated; the mother of the wife with whom he has concluded a marriage; the wife of his ascendant, however high; and the wife of his descendent, however low.

**Article 16**

Every woman who is forbidden for marriage for reasons of kinship and affinity is also forbidden for breastfeeding kinship reasons, except for lawful exceptions.

**Article 17**

For a Muslim man, marriage is permissible with an individual who practices one of the religions of the Book, while a Muslim woman may not marry a non-Muslim man.

**Article 18**

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<sup>8</sup> The text of article 13 was repealed and replaced by the current text by virtue of the first amendment law № 11 of the year 1963.

The conversion of one of the spouses to Islam without the other follows the laws of the Shari'a in whether marriage should be maintained or the spouses should be separated.

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## **Chapter 3 – Matrimonial Rights and their Stipulations**

### **Section 1 – The Dowry**

#### **Article 19**

- 1- The wife is entitled to the dowry stipulated in the contract. If the dowry is not stipulated in the contract or if it is initially denied, the wife shall be given a dowry like that of her peers.
- 2- If the fiancé (*khatib*) gives his fiancée (*makhtoubah*) some money considering it as a part of the dowry and later on one of them dies or changes his mind about the contract, the money that was given should be returned in kind; and if it was consumed, it should be compensated with something in return.
- 3- Gifts fall under the stipulation of donations.

#### **Article 20**

- 1- The dowry may be settled immediately or deferred in part or in total. When this point is not stipulated in the contract, then customary rules shall be followed.
- 2- The dowry maturity date stipulated in the contract ceases to be valid with death or divorce.

#### **Article 21**

The wife is entitled to the entire stipulated dowry with the consummation of the marriage or with the death of the spouse. However, she is entitled to half of the stipulated dowry with divorce or before marriage consummation.

#### **Article 22**

In case of separation after entering into an invalid contract, the smaller of dowries between the one stipulated in the contract and the one like that of the woman's peers shall be settled. If no dowry is stipulated in the contract, a dowry like that of the woman's peers shall be given to her.

### **Section 2 – The Wife's Alimony**

#### **Article 23**

- 1- The wife is entitled to alimony from the husband as of the initiation of the sound contract even if she was staying at her parent's house, unless the husband asks her to move to his place and she abstains unrightfully.
- 2- Her abstention is considered rightful if the husband did not pay her the immediate dowry or as long as he is not spending on her.

#### **Article 26**

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<sup>9</sup> The woman collects her deferred dowry in case of divorce estimated in gold on the date of marriage conclusion as stipulated in Resolution № 127 promulgated by the Revolutionary Command Council dated July 24, 1999.



- 1- A husband should not house with his wife, without her consent, her fellow wife in the same dwelling.
- 2- A husband has the right to house with his wife in the marriage dwelling his son from another until the age of puberty.
- 3- A husband has the right to house his parents or one of them with his wife in the marriage dwelling, and the wife has no right to object to that.
- 4- A husband has the right to house with his wife in the same dwelling whoever is legitimately responsible for their maintenance, provided that no harm would be inflicted on her as a consequence<sup>10</sup>.

**Article 27**

The wife's alimony shall be estimated according to the couple's financial situation, whether they are living in abundance or in modest circumstances.

**Article 28**

- 1- The amount of alimony may be increased or decreased with the change in the couple's financial situation and the living standard in the country.
- 2- A lawsuit concerning the increase or decrease of fixed alimony is to be accepted in the case of emergency circumstances that render it necessary.

**Article 30**

If the wife is facing financial hardship and she has permission to borrow money according to the previous article, and if there is a person from whom she can ask for alimony (if she has no husband), then he shall lend her money upon request and according to his capacity and he shall claim his money back from the husband only. However, if the wife borrows money from a foreigner, the latter shall have the choice to claim his money back from either the wife or the husband. But in case no person is found to lend her money and she is capable of no work, the state shall provide financial assistance.

**Article 31**

- 1- During the proceedings of the alimony lawsuit, the judge has the right to decide on a temporary alimony for the wife to be paid by the husband, and the decision shall be implemented immediately.
- 2- The said decision shall be kept or amended, as to its calculation or rejection, in light of the final verdict.

**Article 32**

The accumulated amount of alimony shall not cease to be effective upon divorce or upon the death of one of the two spouses.

**Article 33**

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<sup>10</sup> Article 26 was repealed and replaced by the current text by virtue of the 16<sup>th</sup> amendment law № 19 of the year 1999. Paragraph 4 was then added to the same article by virtue of the 17<sup>th</sup> amendment law № 22 of the year 1999.

The wife shall not obey her husband in any matter that conflicts with the rulings of the Shari'a and the judge has the right to decide on alimony for her.

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**Chapter 4 – The Dissolution of Marriage**  
**Section 1 – Divorce**

**Article 34**

- 1- Divorce means to sever the bond of marriage. It is done by the man, the woman, any authorized representative or the judge. The divorce must be performed according to the Shari'a.
- 2- A proxy is not accepted in the procedures of social investigation, arbitration and divorce<sup>11</sup>.

**Article 35**

No divorce may occur with the following people:

- 1- The drunk, the insane, the mentally deranged, the compelled, and any person who has lost the capacity to make a sound judgment due to anger, a sudden disaster, age or illness.
- 2- Any person who has a fatal illness, or who is in a state that is most likely to lead to death. If the husband dies because of that illness or state, his wife inherits his legacy.

**Article 36**

No divorce takes place if it is incomplete, conditional or under the form of an oath.

**Article 37**

- 1- The husband performs the divorce by pronouncing three repudiations.
- 2- Three verbal or gestural repudiations pronounced at once will count as only one divorce.

**Article 38**

Divorce is divided into two kinds:

- 1- The revocable divorce which allows the husband to return to his wife during her waiting period (*iddat*) without a contract. The resumption of marriage shall be established the same way a divorce is established.
- 2- The irrevocable divorce is of two kinds as well:
  - a- A minor irrevocable divorce (*talaq ba'in baynounatun sughra*) which allows the husband to marry his divorcee with a new contract
  - b- A major irrevocable divorce (*talaq ba'in baynounatun kubra*) which forbids the husband to marry the divorcee whom he has repudiated three separated times and whose waiting period has expired.

**Section 2 – Legal Separation**

**Article 40**

Both spouses have the right to ask for separation for any of the following reasons:

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<sup>11</sup> Article 34 was repealed and replaced by virtue of the 5<sup>th</sup> amendment law № 156 of the year 1980.

- 1- If one of the spouses injured the other or the children in a way that makes marital life impossible to continue. Considered as injury is addiction to alcohol or drugs. Addiction must be proved in a report prepared by a competent, official medical committee. Another kind of injury is the practice of gambling in the marital house.
- 2- If one of the spouses committed infidelity. Considered as infidelity is the practice of the act of homosexuality in any form.
- 3- If the contract of marriage was concluded before one of the two spouses has completed his 18 years of age, without the consent of the judge.
- 4- If the marriage was concluded outside the court by coercion, and marriage was consummated.
- 5- If the husband marries another wife without the permission of the court. In this case, the wife shall not institute the penal suit by virtue of paragraph 1 of item A of article 3 of the penal procedure code № 23 of the year 1971, according to paragraph 6 of article 3 of this law<sup>12</sup>.

#### **Article 41**

- 1- Both spouses have the right to ask for separation when a dissension arises between them, whether before or after consummation.
- 2- The court shall conduct an investigation into the reasons for dissension. Once the presence of a dissension is verified, the court appoints two arbitrators – if they are available – one from the wife’s family and the other from the husband’s to try to resolve the dissension and reach reconciliation. If arbitrators from families are not available, the court shall authorize the two spouses to nominate them, and if they failed to agree on them, the court nominates them itself.
- 3- The two arbitrators must deploy serious efforts to reach reconciliation. If they fail in their mission, they submit the case to the court revealing to it the party that was proven to be responsible for the dereliction. If disagreement arises between arbitrators concerning that party, the court shall assign a third arbitrator to join them in their effort.
- 4- A- If the court is certain that dissension is still ongoing between the two spouses and it failed to reconcile them, and the husband is refusing to grant his wife divorce, it has the right to separate them.  
 B- If separation takes place after consummation and the wife is the one responsible for the dereliction, the deferred dowry ceases to be effective, whether she is the plaintiff or defendant. And if she has collected the entire dowry by then, she would be bound to restitute no more than half of it. However, if it is proven that both parties are responsible for the dereliction,

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<sup>12</sup> Sections 2, 3 and 4 of the fourth chapter were repealed and replaced by the current text by virtue of the second amendment law № 21 of the year 1978. This amendment also included the replacement of articles 40/45.

This amendment stipulates that section 5 of the fourth chapter would be a third section in it. The expression (considered as infidelity is the practice of the act of homosexuality in any form) was added by virtue of the seventh amendment law № 125 of the year 1981. The text of paragraph 1 of article 40 was repealed and replaced by the current text by virtue of the tenth amendment law № 5 of the year 1986.

then the deferred dowry would be split between them according to the percentage of dereliction attributed to each one of them.

C- If separation takes place before consummation and the wife is proven to be responsible for dereliction, she would be responsible for restitution of the dowry she had collected from her husband.

#### **Article 42**

If the separation lawsuit filed for one of the reasons mentioned in article 40 of this law is dismissed because the reason behind the separation request was not deemed valid, and if a second suit of separation is filed for the same reason, the court shall resort to arbitration in accordance with article 41.

#### **Article 43**

First – The wife has the right to ask for separation for one of the following reasons:

- 1- If the husband is facing an incarceration for a period of three years or more, even if he can still provide for her needs.
- 2- If the husband has abandoned his wife for two years or more without a legitimate reason, his whereabouts are known, even if he can still provide for her needs.
- 3- If the husband did not ask his wife, with whom marriage was not consummated yet, for wedding for two years after the conclusion of the contract. The husband's demand to wed his wife shall not be accepted if he did not fulfill her marital rights.
- 4- If it turned out that the husband is impotent or became impotent and is unable to perform his conjugal duties, whether for physical or psychological reasons, or if he was afflicted with impotence after consummation and it was proven that it is impossible for him to recover based on a medical report prepared by an official competent committee. However, if the court sees that the reason behind impotence is psychological, it shall postpone separation for one year, during which the wife shall not deny her husband the physical relationship.
- 5- If the husband was infertile, or became infertile after marriage and the wife does not have a living child from him.
- 6- If the wife discovers after the conclusion of the contract that her husband is afflicted with a disease that makes sexual intercourse inevitably harmful, such as leprosy, tuberculosis, syphilis, insanity; or if he attracted later one of these diseases or the like. If the court finds out, after medical examination, that the disease is likely to be cured, it shall postpone separation until the disease goes away, and the wife must abstain from sexual intercourse with her husband throughout the whole period of postponement. However, should the court discover that the disease is unlikely to be cured within a reasonable period and the husband refrains from granting his wife divorce and the latter insists on her request, the judge shall rule in favor of separation.
- 7- If the husband abstains from spending on his wife without a legitimate excuse, after granting him a maximum respite of sixty days.
- 8- If it was impossible to collect the alimony from the husband because he had disappeared, or had been absent, missing, or sentenced to more than a one year term of imprisonment.

9- If the husband refrains from settling the fixed cumulated alimony, after being granted a maximum respite of sixty days by the execution authority.

Second – The wife has the right to ask for separation before consummation. In this case, the court’s judgment shall adjudicate separation after the wife returns to her husband the entire amount of the dowry she had collected from him in addition to all the money and expenses he had incurred for the purposes of the marriage and which he can prove.

Third –

A- The Iraqi woman has the right to seek separation from her husband if the latter has been staying in a foreign country for no less than three years and he is a national of this country; or because he is forbidden or abstaining from entering the country.

B- The certification of the competent official authority that the husband has been staying abroad, for the purposes of this paragraph, replaces the notification procedures he is usually entitled to, provided that the judgment rendered against the husband is published in one of the local newspapers.

Fourth –

A- The wife of a person who has been officially declared as missing has the right to seek separation from her husband through the court four years after he is declared as missing. The court shall verify the fact that the husband is still missing in the same way it initially verified that he was missing and then it may render the judgment of separation.

B- After acquiring the judgment of separation, the wife of the missing person shall observe a waiting period (*iddat*) of four months and ten days<sup>13</sup>.

#### **Article 44**

Establishing the reasons of separation may happen by all means of evidence – except for the cases for which the law has specified certain means of evidence – including coherent taped testimonies. It is left to the court to decide on the coherence of the tapes.

#### **Article 45**

Separation in the cases mentioned in articles 40, 41, 42 and 43 is considered a minor irrevocable divorce (*talaq ba`in baynounatun sughra*).

### **Section 3 – Voluntary Separation (Khul’)<sup>14</sup>**

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<sup>13</sup> Paragraph “Third” was added to article 43 by virtue of Revolutionary Command Council resolution № 1128 of September 9, 1985. A new paragraph – Fourth – was added by virtue of the 14<sup>th</sup> amendment law № 8 of the year 1994. Item 3 of the Fourth paragraph was subsequently added by virtue of the 15<sup>th</sup> amendment law № 25 of the year 1994.

<sup>14</sup> Section 5 of the Chapter 4 was considered a third section for the same chapter by virtue of the second amendment law № 23 of the year 1978.

**Article 46**

- 1- *Khul'* is to sever the bond of marriage by pronouncing the formula of *khul'* or words of the same meaning. It is to be carried out before the judge through an offer and an acceptance taking into consideration the provisions of article 39 of this law.
- 2- In order for the *khul'* to be sound, the husband must be qualified to divorce his wife and the latter must be worthy of it. The *khul'* is considered as an irrevocable divorce.
- 3- The husband can divorce his wife through *khul'* in return for the payment of compensation be him and such compensation could be more or less than her dowry.

**Section 5 – The Waiting Period (Iddat)**

**Article 47** – The wife must observe a waiting period called *iddat* in the two following cases:

- 1- If she and her husband are separated after consummation, whether through revocable divorce, minor or major irrevocable divorce, legal separation, annulment, peaceful suspension, or choice of termination.
- 2- If her husband died, even is such death occurred before consummation.

**Article 48**

- 1- In cases of divorce and annulment, the waiting period of the woman whose marriage was consummated takes three possible forms.
- 2- If the woman reached puberty but has never menstruated, her *iddat* after separation shall be of three full months.
- 3- The *iddat* of the woman whose husband is deceased is four months and ten days. If a woman is pregnant woman, she must observe an *iddat* of four months or for the period remaining until delivery of her child, whichever is longer.
- 4- If the husband of a divorcee dies while she is still in her *iddat*, the latter must observe the death *iddat* and the previous period shall not be counted.

**Article 49**

The waiting period starts immediately after divorce, separation or death even if the woman had no knowledge of the divorce or death.

## **Chapter 6 – Procreation and its Results**

### **Section 1 – Kinship**

#### **Article 51**

A woman's child is regarded as the descendent of her husband based on the following two conditions:

- 1- The duration of the marriage is at least as long as the duration of the pregnancy.
- 2- Intercourse between the two spouses is possible.

#### **Article 52**

- 1- The acknowledgment of kinship – even under a fatal disease – to a child whose descent is unknown is established if such a child could be born to such a parent.
- 2- If the acknowledging parent is a married woman, or a woman in her *iddat*, the kinship of the child to the husband will not be established unless the latter believes her or through evidence.

#### **Article 53**

The acknowledgment of fatherhood or motherhood of the one whose descent is unknown is established if the father or mother believes it and if such a child could be born to such a parent.

#### **Article 54**

The acknowledgment of kinship in cases other than fatherhood and motherhood is not established unless the concerned party believes it.

### **Section 2 – Breastfeeding and Custody**

#### **Article 55**

A mother should breastfeed her child except in the case of an illness that prevents her from breastfeeding.

#### **Article 56**

The expenses of nursing a child are the responsibility of the one in charge of his alimony. That would be considered as the alternative of nourishment.<sup>15</sup>

## **Chapter 7 – Maintenance of Descendants, Ascendants and Relatives**

#### **Article 58**

Each person shall be provided with maintenance from his own money except for the wife who shall be provided with maintenance by the husband.

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<sup>15</sup> The text of article 57 was repealed and replaced by the current text by virtue of the second amendment law № 21 of the year 1978. Paragraph 9 of article 57 was repealed and replaced by the current text by virtue of the 11<sup>th</sup> amendment law № 65 of the year 1986, and paragraph 2 was amended by virtue of the 13<sup>th</sup> amendment law № 106 of the year 1987.



**Article 59**

- 1- If the child does not have money of his own, his father shall provide for his needs as long as the latter is not poor and incapable of earning money.
- 2- Parents shall provide for their children, until the girl gets married and the boy reaches a stage where his peers are earning money, provided that he is not still a student.
- 3- The eldest child who is incapable of earning money shall be treated as the youngest child.

**Article 60**

- 1- If the father is incapable of providing maintenance to his child, it shall be incumbent on whoever is responsible for the child's maintenance in a case whether the child has no father.
- 2- This maintenance shall be a debt owed to the provider of maintenance that the father shall settle if his financial situation improves.

**Article 61**

A rich child, whether the eldest or the youngest, is bound to provide his poor parents with maintenance even if they were capable of earning their living as long as the father did not show an obstinacy in choosing unemployment.

**Article 62**

The maintenance of each poor person incapable of earning a living shall be incumbent on his rich relatives who inherit from him, according to the percentage of inheritance they are entitled to.

**Article 63**

The maintenance of relatives shall be adjudicated as of the date of litigation.

## **Chapter 8 - Bequeathing**

### **Section 1 – The Will**<sup>16</sup>

#### **Article 64**

The will is the disposition of the legacy after the death of the testator, intended to pass ownership without compensation.

#### **Article 65**

- 1- The will shall not be considered legally valid unless it was written by the testator and joined with his signature, his seal, or his thumb fingerprint. If the bequest is real estate or movable property the value of which is no more than 500 Dinars, it shall be certified by the notary public.
- 2- The will may be established by testimony if there is a material hindrance that prevents the acquisition of the written evidence.

#### **Article 66**

The will prepared by courts and competent authorities shall be applicable if no concerned party objects to it.

#### **Article 67**

The testator must be legally qualified to donate and he must be the owner of what he bequeaths.

#### **Article 68**

The beneficiary must:

- 1- Actually or presumably be alive at the time of making the will and upon the death of the testator. The will is considered valid for moral persons, charities, and organizations of public interest.
- 2- Not have murdered the testator.

#### **Article 69**

The bequest must be capable of appropriation after the death of the testator.

#### **Article 70**

Bequeathing by will more than one third of the estate is not permissible except with the authorization of the heirs. The state shall inherit from the one who has no heir.

#### **Article 71**

The will is valid only for movable property when the heir is of a different religion. It is also valid only for movable property when the heir is of a different nationality, on the condition of mutual treatment by the heir's country of nationality.

#### **Article 72**

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<sup>16</sup> The expression (... and inheritance) mentioned in the heading of Section 1 of Chapter 8 of the law was cancelled by virtue of the first amendment law № 11 of the year 1963.

The will shall become void in the following cases:

- 1- If the testator retracts his will. However, retraction shall not be established except by proof that is equal to that establishing the existence of the will.
- 2- If the testator loses competence until his death.
- 3- If the testator uses the bequest in a way that alters its name or most of its characteristics.
- 4- If the bequest was destroyed or consumed by the testator.
- 5- If the beneficiary refuses his bequest after the death of the testator.

#### **Article 73**

The will shall take into consideration the provisions of articles 1108 to 1112 of the Civil Code.

#### **Article 74**

- 1- If the child, male or female, dies before his father or mother, he shall be considered as alive upon the death of any of them. His share of the legacy shall be handed down to his own children, males or females, according to Shari'a laws. It shall be regarded as a binding will provided that it won't exceed one third of the legacy.
- 2- The binding will, by virtue of paragraph 1 of this article, shall gain priority over other wills in the settlement of one third of the estate.<sup>17</sup>

### **Section 2 – Appointing an Executor**

#### **Article 75**

The executor is nominated by the testator to carry out the directions of the will after his death.

#### **Article 76**

The executor must enjoy legal and legitimate competence.

#### **Article 77**

- 1- If the executor accepts the nomination in the life of the testator, it shall become binding on him after the latter's death and he shall not withdraw his acceptance unless he was given the right to choose.
- 2- If the executor withdraws his acceptance of the nomination during the life and with the knowledge of the testator, his renunciation shall be valid.

#### **Article 78**

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<sup>17</sup> Article 74 was cancelled by virtue of the first amendment law № 11 of the year 1963. A new text was added to article 74 by virtue of the third amendment law № 72 of the year 1979. This amendment took effect as of its publication in the official gazette, and its provisions shall apply to the deaths of grandfathers and grandmothers taking place after its entering into effect.

- 1- If the testator appoints more than one executor, the latter will have no right to solely dispose of the will. In case one of them did, his decision shall not be effective but with the authorization of the other.
- 2- The disposition of the will by one of the two executors without the permission of the other shall be effective in the following cases:
  - a- If it does not go against common sense.
  - b- If it involves no collection or receipt of money.
  - c- If its delay will cause harm.
- 3- If the testator had requested that his executors be unified or independent from one another, his request shall be observed.
- 4- In case of a dispute between the executors, the judge will oblige them to cooperate; otherwise he shall replace them with others.

**Article 79**

The executor shall observe each condition stipulated by the testator in the will unless it is against the law and the Shari'a.

**Article 80**

The executor is the guardian of the money he is entrusted with, so he shall not be penalized unless he breaks the trust or fails to perform his mission.

**Article 81**

If a person dies without having appointed an executor, the judge shall appoint an executor in the following cases:

- 1- If the deceased is owed money and he has no heir to establish the debt and collect it.
- 2- If the deceased owes money to another person and he has no heir to settle it.
- 3- If he has a will but there is no executor to implement it.
- 4- If one of the heirs is a minor and has no guardian.

**Section 3 – Cessation of Custody**

**Article 82**

The guardian's mission ceases to exist in the following cases:

- 1- The death of the minor.
- 2- The minor reaches 18 years (unless the court decides that custody must continue).
- 3- The father or the grandfather recovers custody after it ceases to be his.
- 4- The completion of the work the guardian was appointed to supervise or the expiration of his temporary appointment period.
- 5- The acceptance of his resignation.
- 6- The cessation of his competence.
- 7- His disappearance.
- 8- His dismissal.

**Article 83**

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- 1- The testator has the right to dismiss the guardian he had appointed without the latter's knowledge.
- 2- The judge does not have the right to dismiss the chosen guardian unless for a legitimate reason. If he is partially incapable, the judge has the right to appoint someone to assist him, and if he is totally incapable, he can replace him with another.

#### **Article 84**

The guardian is dismissed in the following cases:

- 1- If he is convicted with a dishonorable crime or a felony.
- 2- If he is sentenced to more than a one year period of imprisonment.
- 3- If a legal litigation or family dispute occurs between the minor and one of the guardian's ascendants or descendents, or his wife in a way that might harm the minor's interest.
- 4- If the court deems the guardian's actions and negligence threatening to the minor's interest.
- 5- If some cheating occurred in the accounts of the guardian.

#### **Article 85**

The guardian shall be dismissed as of the date of loss of competence.

### **Chapter 9 – The Legacy<sup>18</sup>**

#### **Article 86**

(A) The pillars of inheritance are three:

- 1- The testator: he is the deceased.
- 2- The beneficiary: he is the living person who is entitled to the inheritance
- 3- The inheritance: it is the money or property left to the beneficiary.

(B) The reasons of inheritance are two: kinship and sound marriage.

(C) The conditions of inheritance are three:

- 1- The testator is actually or inevitably dead.
- 2- The beneficiary is proven to be alive after the death of the testator.
- 3- Knowledge of the location of the inheritance.

#### **Article 87**

The rights related to the inheritance after the death of the testator are four and prioritized as follows:

- 1- Preparing the body for burial according to the Shari'a.
- 2- Settling his debts from the entirety of his own money.
- 3- Executing his will from one third of his estate.
- 4- Giving the rest to those who are entitled to it.

#### **Article 88**

Those who are entitled to inheritance are:

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<sup>18</sup> Chapter 9 was added to the law after article 85. The sequence of the following articles was then adjusted accordingly by virtue of the first amendment law № 11 of the year 1963. The articles that were added by virtue of the said amendment law are articles 86, 87, 88, 89, 90, 91.

- 1- The beneficiaries by kinship and sound marriage.
- 2- The one whose kinship was acknowledged.
- 3- The one designated by the deceased
- 4- The treasury.

#### **Article 89**

The inheritors by kinship and the way to bequeath them:

- 1- The two parents and the children even if the male gets a portion equal to that of two females.
- 2- The grandfather, the grandmothers, the brothers, the sisters, and the children of brothers and sisters.
- 3- Paternal and maternal aunts and uncles and the relatives on the maternal side.
- 4- The full sister is treated the same way as the full brother regarding disinheritance<sup>19</sup>.

#### **Article 90**

Taking into consideration the above mentioned provisions, entitlements and shares shall be distributed between the inheritors by kinship according to the Shari'a rules that were in force before the legislation of the Personal Status Law № 188 of the year 1959, as they are observed in the rest of the inheritance rules.

#### **Article 91**

- 1- The husband is entitled to a quarter of the legacy when there is an inheriting descendent to his wife; and to half when the latter does not exist. As for the wife, she is entitled to one-eighth of the legacy when there is an inheriting descendent; and to a quarter when the latter does not exist.
- 2- The daughter or daughters, in case there is no son, are entitled to the remaining part of the legacy, after the two parents and the spouse collect their entitlements; and they would be entitled to the entire legacy if none of the said parties exists<sup>20</sup>.

#### **Article 92**

All legislative texts that contradict with the provisions of this law shall be annulled.

#### **Article 93**

This law shall enter into effect as of the date of publishing it in the official gazette.

#### **Article 94**

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<sup>19</sup> Paragraph 4 was added at the end of article 89 by virtue of the third amendment law № 34 of the year 1983. This law shall become effective as of the date of its publication in the official gazette, and its provisions shall apply to the deaths that take place after its entering into effect.

<sup>20</sup> The text of article 91 considered paragraph 1 as the article in itself and a second paragraph was added to it by virtue of the second amendment Law № 21 of the year 1978.

This law was written in Baghdad on the 19<sup>th</sup> of Jamada I, 1379 A.H. (January 19, 1959).

**The Sovereignty Council**

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