Personal Status Law of 1959

Personal Status Law (1)
No. 188 of 1959
And its amendments

Personal Status Law
In the Name of the People
Sovereignty Council
After considering the provisional constitution and in accordance with the recommendation of the Minister of Justice and the approval of the Cabinet,

The following law has been promulgated:

General Provisions

Article 1

1. The legislative provisions of this Law shall apply to all matters addressed by these provisions in word or content [letter and spirit?].

2. If there is no legislative provision that can be applied, then the principles of Islamic Shari’a most appropriate to the provisions of this Law shall be applicable.

3. The courts shall be guided, in all this, by the provisions adopted by the Islamic judiciary and jurisprudence in Iraq and the other Islamic countries with laws that would be converge with Iraqi laws.

Article 2

1. The provisions of this Law shall apply to all Iraqis unless (they have been) exempted by a special law.

2. The provisions of Articles 19, 20, 21, 22, 23 and 24 of the Civil Code shall apply if there is a conflict of the laws in terms of spatial jurisprudence.

Part 1: Marriage

Chapter 1: Marriage and Engagement

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 found a bond to procreate and live together.
2. If the marriage is consummated, both parties must abide by the provisions incurred upon its establishment.

3. The promise to marry, recitation of the Fatiha (Translator: the first Chapter of the Holy Qur’an), and engagement shall not be considered a marriage contract.

4. Polygamy is not allowed without a judge’s permission. To give permission, the following conditions must be fulfilled:
   a. The husband must have financial sufficiency to support more than one wife. (2)
   b. There is a legitimate interest.

5. If there are concerns on injustice between/among the wives, polygamy is not permissible, and the matter is left to the discretion of the judge.

6. Anyone officiating a marriage contract to more than one woman in violation of clauses 4 and 5 shall be subject to punishment by imprisonment for a maximum of one year and/or a maximum fine of one hundred dinars.

7. Notwithstanding (Save/With the exception of) items 4 and 5 of this Article, polygamy shall be permitted if the bride-to-be is a widow. (3)

Chapter 2: Contract Pillars and Conditions

Article 4

The marriage shall be contracted/entered into with the offer – verbal or customary – of either of the two contracting parties and the acceptance of the other; an agent can be appointed instead.

Article 5

Capacity in the marriage contract shall be considered attained with the fulfilment of the legal and Shari’a conditions in the two parties or their appointed agents.

Article 6

1. The marriage contract shall not be entered into if it loses a condition of contracting a marriage or validity thereof, as outlined below:
   a. The session of offer and acceptance is one and the same (a single session).
b. Both parties to the contract hear the other party’s words and understand that they mean entering into a marriage contract.

c. Acceptance of the offer.

d. The presence of two witnesses with legal capacity during the marriage contract signing.

e. The contract is neither conditional nor subject to an unrealizable event.

2. The marriage contract shall be concluded in writing between an absent groom-to-be and the bride-to-be, on the condition that she reads such a letter or reads it out to the witnesses, and they testify that she accepts the marriage.

3. The legitimate conditions in the marriage contract must be fulfilled.

4. A wife may request avoidance of the contract (فسخ العقد) when the husband fails to fulfil the conditions in the marriage contract.

Chapter 3: Capacity

Article 7

1. Full capacity to constitute a marriage requires a sound mind and completing eighteen years of age. (4)

2. A judge may permit the marriage of either spouse with a mental illness if a report concludes that the marriage will not cause harm to society and that it is in their best interest, if there is explicit consent to the marriage from both sides.

Article 8

1. If an individual who has completed fifteen years of age submits a marriage request, the judge may approve it if he finds that the requester has capacity and physical fitness subject to the legal guardian’s consent. If the legal guardian withholds consent, the judge shall request his approval within a specific period of time that he decides. If there is no objection or if the objection is unmerited, the judge may permit the marriage.

2. A judge may permit the marriage of a fifteen-year-old if he finds this absolutely necessary. Permission shall be contingent upon lawful maturity and physical capacity. (5)

Article 9
1. No relatives or third party may coerce any person, male or female, to marry without consent. Coerced marriages shall be considered null and void, if the marriage was not consummated. No relatives or third party may prevent the marriage of individuals qualified for marriage in accordance with the provisions of this Law.

2. Anyone violating the provisions of paragraph 1 of this Article shall be punishable with imprisonment for a maximum of three years and/or a fine, if it is a first degree relative. If it is otherwise, the penalty shall be imprisonment for a maximum of ten years or detention for a minimum of three years.

3. The Shari’a Court or the Personal Status Court may notify the investigative authorities to take legal action against violators of the provisions of paragraph 1 of this Article. They may detain him to guarantee appearance before these authorities. Anyone subject to coercion or prohibition may resort to the investigative authorities immediately in this regard. (6)

Chapter 4: Registration and Proof of Marriage Contracts

Article 10

The marriage contract shall be registered with the competent court without a fee in a special register in accordance with the following conditions:

1. Submission of a statement without stamps containing the identity of the parties to the marriage contract, their age, dowry amount, and proof of no legal impediment to the marriage. The statement must be signed by the two parties and notarized by the neighbourhood or village chief or two notable residents.

2. Submission of a medical report affirming that the couple are free of contagious diseases and health impediments to the marriage, and other documents requested by the law.

3. The statement contents shall be recorded in the register and signed by the two parties or their thumb prints in the presence of the judge. The judge shall notarize this and provide the couple with a marriage certificate.

4. The content of the duly registered certificates shall be effective without proof and shall be enforceable with regard to dowry unless they are appealed/challenged before the competent court.

5. Any man entering into a marriage contract outside the court shall be punishable with a minimum of six months and a maximum of one year, or a minimum fine of three hundred or a maximum of one thousand dinars. The penalty shall be imprisonment for
a minimum of three years and a maximum of five years if he enters into another marriage outside the court while already married. (7)

Article 11

1. If a man acknowledges to a woman that she is his wife, and there was no Shari’a or legal prohibition, and she confirmed this, the marriage shall be considered valid with his acknowledgement.

2. If a woman acknowledges that she has married a man and he confirmed this in her lifetime, and there was no Shari’a or legal prohibition, the marriage shall be considered valid. If he confirms this after her death, the marriage shall not be considered valid.

Part 2

Chapter 1: Women Unmarriageable to Certain Men and Marriage to Women of the Book

Article 12

For a marriage to be valid the woman must not be unmarriageable/not eligible for marriage from a Shari’a perspective to the man wishing to marry her.

Article 13

The causes of Shari’a-founded un-or non-marriageability (un- or non-marriageableness) are twofold: permanent and temporary. Permanent prohibitions are blood and marriage relations and nursing/breastfeeding. Temporary prohibitions are polygamy in excess of four wives, followers of religions other than those divinely revealed, three incidents of divorce, the right of others to marriage or prescribed waiting period, and the marriage of a non-marriageable wife who is taking care of the other. (8)

Article 14

1. Men are prohibited from marrying their mother, grandmother, daughter, granddaughter, sister, niece, paternal aunt, the paternal aunt of their parents, maternal aunt or the maternal aunt of their parents. (Translator: generally speaking, ascendants and descendants).

2. Women may not marry the equivalent of those in men. (Translator: generally speaking, her ascendants and descendants)

Article 15
Men are prohibited from marrying the daughters of their wives, if the marriage was consummated, the mother of their wives, once the contract is entered into, the wives of their parents and the wives of their children. (Translator: generally speaking, ascendants’ wives and descendants’ wives)

Article 16

All individuals prohibited by blood and marriage (relationships) shall be prohibited by nursing/breastfeeding, with the exception of the Shari’a exceptions.

Article 17

Muslim men may marry a woman from a religion that has been divinely revealed. Muslim women may not marry non-Muslims.

Article 18

Entering into Islam by one spouse before the other shall follow the Shari’a-based provisions in remaining married or becoming separated.


Chapter 1 – Dowry (9)

Article 19

1. The wife shall be entitled to the dowry designated in the contract. If it is not designated or negated, she shall be entitled to the dower or the dower of the like.

2. If the betrothed groom gives his fiancé before the contract an advance on the dowry, and then either party refuses to proceed with the contract or either of them dies, the amount may be recovered in kind; and (shall be) replaced if consumed.

3. The provision on grants shall apply to gifts.

Article 20

1. The dowry may be accelerated or deferred, wholly or partly. When no provision is made on it, norms/customs shall be followed.

2. The term designated in the contract for the dowry shall become invalid upon death or divorce.

Article 21
The wife shall be entitled the entire amount of the designated dowry with the consummation of marriage or the death of either spouse. She shall be entitled to half of the amount designated upon divorce before consummation.

Article 22

If there is a separation after consummation in an invalid contract, and the dowry was designated, then the dowry designated or the dower of the like, whichever is lesser, shall be due. If no dowry is designated, then the dowry of the like shall be due to her.

Chapter 2: Alimony

Article 23

1. The husband shall be obligated to pay alimony to the wife upon entering into a valid contract, even if she was residing with her family, unless the husband requests that she moves to his home and she unrightfully refuses.

2. The wife’s refusal shall be considered rightful if the husband has not paid the accelerated dowry or has not provided for (paid alimony to) her.

Article 24

1. The alimony due to the obedient wife shall be considered a debt incurred by the husband, for a maximum period of one year from the time he refrained from supporting her. (10)

2. The alimony shall include food, clothing, housing and its requirements, medical care in the customary amounts, and service for the wife whose peers have an aide (helper, etc.) (11)

Article 25

1. A wife may not be entitled to alimony in the following cases:
   a. If she leaves her husband’s home without permission and without legitimate cause.
   b. If she is imprisoned for a crime or debt.
   c. If she fails to travel with her husband without legitimate excuse.

2. A wife may not be bound by obeying her husband and shall not be considered disobedient if the husband is arbitrary in the request for obedience with the intent of
causing her harm or restriction. The following shall be considered especially arbitrary and harmful:

a. The husband failing to provide a home for his wife in a manner befitting the couple’s social and economic circumstances.

b. If the home provided is far away from the wife’s place of work, so that she cannot fulfil her home and work duties.

c. If the furniture in the home does not belong to the husband.

d. If the wife is afflicted with an illness preventing her from being obedient to her husband.

3. The court must hold off on issuing a ruling on a wife’s disobedience until it considers the reasons for such refusal to obey.

4. The court must find that the wife is disobedient after exerting all efforts to remove the causes of disobedience.

5. Disobedience shall be considered a cause for separation, as follows:

a. The wife may request separation after two years from the date that the disobedience ruling becomes final. The court must order the separation. In this case, the deferred dowry shall not be due. If the wife had received her full dowry, she should be committed to refund half of what she had received.

b. The husband may request separation immediately after the disobedience ruling becomes final. The court must order the separation and obligate the wife to refund the accelerated dowry received. The deferred dowry shall not be due. If the separation is made after consummation, the deferred dowry shall not be due and the wife shall be committed to refunding half of the amount she had received, had she received the full dowry.

6. The separation attained in accordance with paragraph 5 of this Article shall be considered a minor irrevocable divorce. (12)

Article 26

1. The husband may not bring in his second wife to live in a single home with his first wife without her consent.

2. The husband may bring his child from another wife to live with his (current) wife in the marital home until the child reaches the age of maturity.
3. The husband has the right to bring his parents or either of them to live with his wife in the marital home. The wife may not object to such move.

4. The husband may bring in, to live with his wife in a single home, anyone he is committed to support according to Shari’a, unless his wife is caused harm as a result. (13)

Article 27

The wife’s alimony by the husband shall be established according to their financial status, be they solvent or insolvent.

Article 28

1. The alimony may be increased or decreased with the change in the spouses’ financial circumstances and the prices prevailing in the country.

2. The suit to increase or decrease the imposed alimony shall be accepted when an emergency so requires.

Article 29

If a husband leaves his wife without alimony and disappears, is absent, or is missing, the judge shall order her alimony from the date the suite is filed after proving the marriage. The wife shall swear that the husband has not left her alimony and that she is not disobedient or divorced with a concluded prescribed waiting period (Iddat عدة). The judge shall allow her to borrow in her husband’s name when necessary.
Article 30

If a wife is in insolvent circumstances and permitted to borrow in accordance with the previous Article and there is an individual committed to support her (if she is not with a husband), he shall be obligated to lend her funds upon request and ability. He may only claim repayment from the husband. If she borrows from a stranger, the debtor may choose to claim payment from the husband or wife. If there is no one she can borrow from, and she is unable to work, the State shall be obligated to support/provide for her.

Article 31

1. When hearing the alimony case, the judge may assess a provisional husband-incurable alimony for the wife. This decision shall be enforceable.

2. This decision shall follow the result of the original ruling in terms of acceptance or rejection.

Article 32

The accumulated amount of alimony shall not prescribe with divorce or the death of either spouse.

Article 33

The husband shall not merit obedience in every matter that is in violation of Shari’a provisions, and the judge may order the wife alimony.

Part 4: Dissolution of Marriage Contract

Chapter 1: Divorce

Article 34:

First: Divorce is the removal of marriage registration/record by the husband or the wife, if she is authorized or delegated, or by the judge. The divorce can only take place in the manner legally prescribed for it.

Second: The power of attorney shall not be considered in proceedings of social research, arbitration, and divorce. (14)

Article 35:

Divorce by the individuals described below shall not be valid:

1. An individual who is drunk, insane, an imbecile, coerced, or who cannot reason as a result of anger, a sudden crisis, old age or illness.
2. An individual on his deathbed or in a state where the customary result is death, if he dies as a result of that illness or state, and his wife inherits him.

**Article 36**

Divorce which is incomplete/ineffective، غير المجز لconditional or used as an oath shall not be considered valid.

**Article 37**

1. The husband may divorce his wife three divorces.

2. The divorce associated with a number of verbalisations or signs of divorce shall only be counted once.

3. A divorced woman on three separate occasions shall be majorly irrevocably divorced from her husband.

**Article 38**

1. Revocable divorce: This allows the husband to return his wife to him during her prescribed waiting period without a marriage contract. This shall be registered as a divorce.

2. Irrevocable divorce: This is two parts:
   a. Minor irrevocable – This allows the husband to marry the woman he divorced with a new contract.
   b. Major irrevocable – This denies the husband the right to marry the woman he divorced on three separate occasions, and whose prescribed waiting period has concluded.

**Article 39**

1. A person wishing to divorce must file a suit at the Shari’a court requesting the divorce and a ruling on it. If he is unable to resort to the court, the divorce must be registered at the court during the prescribed waiting period.

2. The marriage certificate shall be considered valid until it is annulled by the court.

3. If the husband divorces his wife and the court finds that the husband was arbitrary in the divorce, which resulted in causing harm to the wife, the court may, at her request, order the husband to pay compensation that is proportionate to his financial
circumstances and degree of arbitrariness, assessed as a lump sum. This may not exceed her alimony for two years, in addition to her other established rights. (15)

Chapter 2: Judicial Separation

Article 40

Either spouse may request a separation for any of the following reasons:

1. If either spouse has caused harm to the other or their children, after which marital life cannot continue. This harm shall include addiction to alcohol or narcotics, provided that the addiction is proven in a report by a competent formal medical committee, and gambling in the marital home.

2. If the husband commits adultery. Adultery shall include homosexuality in any form.

3. If the marriage contract was constituted before either spouse turned eighteen, without a judge’s consent.

4. If the marriage was constituted outside the court by coercion, and it was consummated.

5. If the husband marries a second wife without permission from the court. In this case, the wife may not file a penal suit, in accordance with paragraph 1 of Item A of Article 3 of the Penal Procedural Law no. 1971, as indicated in paragraph 6 of Article 3 of this Law. (16)

Article 41

1. Either spouse may request separation following a dispute between them, before or after consummation.

2. The court must investigate the causes of the dispute. If it finds there is a dispute, it shall appoint an arbitrator from the wife’s family and another from the husband’s family – if any – to consider reconciliation. If these cannot be found, the court shall mandate the couple to elect two arbitrators. If they cannot agree, the arbitrators shall be appointed by the court.

3. The arbitrators must strive to reach a reconciliation, and if this is not possible, they must raise the matter with the court and explain the party responsible for the negligence. If they disagree, the court shall appoint with them a third arbitrator.

4. A. If the court finds that there is continued conflict between the spouses, it fails to reconcile them, and the husband refrained from implementation, the court shall order their separation.
B. If the separation takes place after consummation, the deferred dowry shall no longer be valid if the negligence is on the part of the wife, whether she is a plaintiff or defendant. If she received the entire dowry, she should be obligated to refund a maximum of half of it. If the negligence is proven on both sides, the deferred dowry shall be divided between the spouses according to the degree of negligence attributed to each of them.

C. If the separation was before consummation and the negligence was proven on the part of the wife, she shall be obligated to refund the deferred, already received accelerated dowry.

**Article 42**

If the separation suit is rejected for a reason provided for in Article 40 of this Law on the grounds of lack of proof, and the decision becomes final, then a second separation suit is filed, the court must resort to arbitration, in accordance with Article 41.

**Article 43**

First: The wife may request separation on the grounds of any of the following reasons:

1. If the husband has received a sentence restricting liberty (custodial sentence) for three years or more, even if he had funds that she could spend from.

2. If the husband abandons his wife for two years or more without legitimate cause, even if the husband had a known place of residence and funds that she could spend from.

3. If the husband does not request to wed his wife with whom the marriage has not be consummated within two years from the date the contract was constituted. The request by the husband to wed his wife shall not be considered if he has not fulfilled her marital rights.

4. If she finds that her husband is ailed or afflicted to the extent that he cannot fulfil marital duties, whether for physical or psychological reasons, or if he is afflicted with this after consummation and it is proven that he cannot recover from this in a report by a competent formal medical committee. If the court finds that the cause is psychological, the separation shall be postponed for one year, on condition that she makes herself available to be approached by him during that time.

5. If the husband is sterile or become sterile after marriage, and she has not given birth to a live child from him.
6. If she finds after constitution of the contract that her husband is afflicted with an illness after which she cannot be intimate with him without harm, such as leprosy, tuberculosis, syphilis or insanity, or he becomes afflicted with these or similar afflictions, and the court finds after the medical examination that recovery is possible, the separation shall be postponed until after recovery. The wife may refrain from meeting with the husband throughout this postponement period. If the court finds that the affliction may not be recovered from within an appropriate period and the husband refuses divorce, and the wife insists on it, then the judge may order separation.

7. If the husband refrains from supporting her without legitimate cause, after granting him a maximum sixty-day grace period.

8. If alimony cannot be collected from the husband due to his absence, loss, disappearance or prison sentence in excess of one year.

9. If the husband fails to pay the alimony accumulated after he is granted a maximum period of sixty days by the execution/enforcement department.

Second: The wife may request separation before consummation, and the court in this case must order the separation after the wife refunds to the husband any dowry that she received, and all proven expenses and funds paid for marriage purposes.

Third:

A. An Iraqi wife may request separation from her husband residing outside the country due to a foreign nationality that he holds, if he has been residing abroad for a minimum of three years, because he is either prohibited or refraining from entering the country.

B. Supporting documents indicating that the husband is residing abroad must be provided by the competent formal authority for the purposes of this paragraph as an alternative to notification of the lawsuit and court date, provided that the ruling issued against the husband is published in a local newspaper.

Fourth:

1. The wife of an officially-proven to be a missing person, may request separation from her husband by the court four years after he has gone missing. The court must establish that he is still missing in the same manner it established that he was missing, then rule on the separation.

2. The wife of a missing person must follow a prescribed waiting period of four months and ten days after the separation ruling. (17)
Article 44

The causes of separation may be proven by all means available, including heard testimony, if it is recurring. This is left to the discretion of the court, with the exception of cases where the law provided for specific means of proof.

Article 45

Separation in the cases provided for in articles 40, 41, 42 and 43 shall be considered a minor irrevocable divorce.

Chapter 3 (18)

Elective Separation (Repudiation “khola” خُلْع)

Article 46

- Repudiation is the annulment of the marriage using the term repudiation (“khola” or “mukhala’ah” in Islamic terminology) or its equivalent. It shall be offered and accepted before the judge, taking into account the provisions of Article 39 of this Law.

- For a valid repudiation, in order for the “mukhala’ah” to be valid, the husband must be competent to divorce and the woman must be favourable to it. The repudiation shall constitute an irrevocable divorce.

- The husband may agree to repudiate his wife in return for compensation in excess of her dowry or below it.

Chapter 5: Prescribed Waiting Period

Article 47

The wife is applicable to a prescribed waiting period in the following two cases:

1. If the spouses become separated after consummation, whether it is a revocable or minor or major irrevocable divorce, separation, desertion “motarakah”, annulment or maturity/adulthood/age-of-consent choice.

2. If the husband is deceased, even if it is before the consummation.

Article 48

1. The prescribed waiting period for divorce and avoidance of marriage contract for a consummated marriage shall be three menstrual cycles (three months).

2. If the woman has matured but has not already experienced menstrual cycles, then the prescribed waiting period for divorce or separation shall be three full months.
3. The prescribed waiting period for the widowed woman shall be four months and ten days for non-expectant (non-pregnant) women. For pregnant women, the prescribed waiting period shall be the date of delivery or that for a non-pregnant woman, whichever is longer.

4. If the divorced woman’s husband dies while she is in the prescribed waiting period, then she will initiate a death prescribed waiting period, and the past period shall not be considered.

**Article 49**

The prescribed waiting period shall start immediately after divorce, separation or death, even if the woman was not aware of the divorce or death.

**Article 50**

Alimony must be paid to the divorced woman by her living husband, even if she was disobedient. There is no alimony for the prescribed waiting period following death.
Chapter 6: Birth and its Repercussions
Chapter 1: On Lineage/Parentage

Article 51
The parentage/lineage of a child of every wife shall be attributed to her husband with the fulfilment of the two following conditions:

1. The required least pregnancy term has passed after the marriage was constituted. 
2. The meeting of the spouses is possible.

Article 52
1. Acknowledgement of fatherhood – even if it was on the death bed – for a person of unknown parentage shall be established, if the recognizing/acknowledging person can bear a child like the person in question.
2. If the acknowledging/recognizing person is a married woman or in a prescribed waiting period, the lineage of the child to the father shall only be established with his verification or with proof.

Article 53
A recognition (an acknowledgement) by the person of an unknown parentage (fatherhood or motherhood) shall be established if confirmed by the parent in question, and if a child like that can be born to the person in question.

Article 54
A recognition of lineage in a relationship other than that of a child, father or mother shall not apply to the individual not recognizing such lineage without his confirmation.

Chapter 2: On Nursing/Breastfeeding and Custody

Article 55:
A mother must nurse/breastfeed her child, except in case of an illness preventing her from doing so.

Article 56:
The wages for nursing/breastfeeding the child shall be paid by the person mandated with supporting the child (providing for their alimony). This shall be considered in lieu of nutrition.
Article 57:

1. The mother is more deserving of the custody and upbringing of the child, as long as the marriage is valid and after separation, unless the child in custody is harmed by this measure.

2. The mother with custody must be a sane adult able to raise and maintain the child in custody. The custody of the divorced mother shall remain valid after her marriage. The court shall decide in this case the entitlement of the mother and father on custody in view of the interests of the child. (19)

3. If the mother with custody disagrees with the person mandated with supporting the child on the wages for custody, the court shall assess such alimony. No custody wages shall be ruled upon as long as the marriage is valid or the wife is in a prescribed waiting period following a revocable divorce.

4. The father may consider the affairs, upbringing and education of the child in custody, until he completes ten years of age. The court may permit the extension of the child’s custody, until he completes fifteen years of age if it finds, following consultations with the specialized medical and popular committees, that the child’s interests require such extension. The child may only stay with the mother who is granted custody (sleep in the place where the mother who is granted custody stays).

5. If the child under custody completes fifteen years of age, he may choose to reside with whoever parent, or a relative he wishes, until he completes eighteen years of age, if the court finds that he is rational in his choice.

6. The mother with custody whose custody has been concluded by a ruling may request recovery of custody from the person granted custody of the child if it is proven that the child was harmed during the time that he has stayed with him.

7. If the child’s mother loses a condition for custody or dies, custody shall revert to the father, unless the interests of the child require otherwise. In this case, custody shall revert to someone chosen by the court, taking into account the interests of the child.

8. If neither parent is qualified to have custody, the court shall assign the child to a trustful foster caregiver. It may decide to place the child in a foster home administered by the state, when available.

9. A. If the child’s father loses a condition for custody, the child shall stay with his mother as long as she maintains custody conditions. His male and female relatives shall not have the right to contest her custody until he reaches the age of maturity.

   B. If the child’s father dies, the child shall stay with his mother even if she marries an Iraqi not related to the child, on condition:

      1. That the mother maintains the remaining conditions for custody.
      2. The court is persuaded that the child is not harmed by staying with his
mother.

3. The step-father pledges to look after the child and refrain from harming him as soon as the marriage is constituted.

C. If the step-father violates the pledge provided for in point 3 of Item B, this shall be cause for a request for separation by the wife.

Chapter 7: Alimony for Descendants, Ascendants and Relatives

Article 58
Every person shall support himself from his funds, with the exception of the wife who must be supported by her husband.

Article 59
1. If the child does not have funds, he must be supported (provided for) by his father, unless he is impoverished and is unable to provide funds and earn a living.
2. Support for the children shall continue until the female marries and the male reaches the level where his peers are earning funds, unless he is a student.
3. The older son who is unable to earn a living shall be treated like a young son.

Article 60
1. If the father is unable to provide support, the child support shall revert to the person mandated with support when there is no father.
2. The alimony shall be incurred as a debt by the father, and the person providing support may claim it once the father becomes affluent.
Article 61
An affluent child, whether old or young, must support his impoverished parents, even if they were able to earn a living, unless the father insists on choosing unemployment.

Article 62
Support for every impoverished person who is unable to earn a living must be provided for by his affluent next of kin heirs in the amount of (potential) inheritance.

Article 63
The support from the next of kin/relative shall take effect from the date of the claim.

Chapter 8: On Testaments

Chapter 1: The Will (20)
Article 64
The Will is dispensed from the estate after death and intended to give ownership for no consideration.

Article 65
1. The Will shall not be considered without written evidence signed by the legator or stamped with his seal or thumb print. If the estate is real estate or movable property in excess of five hundred dinars, it must be certified by a notary public.
2. The Will may be established by testimony if there is a physical reason preventing access to written evidence.

Article 66
The Will executed by the courts and competent departments is enforceable, unless stakeholders object to it.

Article 67
The legator must be legally qualified to donate and must own his estate.

Article 68
The legatee must fulfil the following conditions:
1. The legatee must be alive, in fact or by assessment, at the time of drafting the Will and
upon the death of the legator. The Will is valid for juridical persons, charitable organizations, and public utility enterprises.

2. Must not be a killer of the legator.

**Article 69**
The estate must be transferrable/assignable in ownership after the death of the legator.

**Article 70**
The Will may not exceed a third of the estate without the permission of the heirs. The State shall be the heir of anyone without an heir.

**Article 71**
The Will is considered valid for movable property only with a difference in religion and is valid with a difference in nationality on condition of reciprocity.

**Article 72**
The Will shall be null and void in the following circumstances:

1. If the legator rescinds his Will, and rescinding with evidence shall not be equal to the force/effect of proving the Will
2. If the legator loses competence until the time of death.
3. If the legator disposes of the estate in a manner that removes the name of the legator or most of its characteristics.
4. With the diminishing of the estate or its consumption by the legator.

5. With the rejection of the legatee of the will after the legator’s death. [translator note: I’m assuming the first word in this sentence is mistyped and it is in fact رد and not رج]

**Article 73**
The provisions of Articles 1108 to 1112 of the Civil Code shall be taken into account for Wills.

**Article 74**

1. If the child dies, male or female, before the death of the father or mother, he shall be considered alive upon the death of either of them. His share of the inheritance shall be transferred to his children, male or female, according to the Shari’a provisions, as a mandated Will. This may not exceed a third of the estate.

2. The mandated Will, in accordance with paragraph 1 of this Article, shall supersede all other Wills, and in collection from one third of the estate. (21)
Chapter 2: Appointment of a Guardian

Article 75
The appointment of a guardian is the assignment of someone to oversee the estate after death.

Article 76
The guardian must have legal and Shari’a capacity.

Article 77
1. If the guardian accepts guardianship in the life of the legator, it shall become binding and he may not relinquish the task after the death of the legator unless he was granted the right to choose.
2. If the guardian rejects the guardianship while the legator is alive and with his knowledge, the rejection shall be valid.

Article 78
1. If the legator appoints more than one guardian, one may not dispose of the estate individually, and in that instance, the disposal shall not be enforced without the permission of the others.
2. The disposal of one guardian without permission from the other shall be enforced in the following cases:
   a. Whatever remains the same in spite of differences in opinion
   b. Whatever does not require the receipt of funds.
   c. Whatever leads to harm if delayed.
3. If the legator provides for guardians – jointly or severally, the legator’s provisions shall be followed.
4. If the guardians cannot agree, the judge shall force them to meet, or replace them with others.

Article 79
The guardian must follow every condition provided for by the legator in his Will, unless the condition is in violation of Shari’a and the law.

Article 80
The guardian is the trustee on the funds under his guardianship, and as such shall only be guaranteed in the event of his transgression or misconduct.
Article 81
If a person dies without installing a guardian, the judge may appoint him in the following cases:

1. If the deceased was owed a debt and there is no heir to prove and collect it.
2. If he owed a debt and there is no heir to repay it.
3. If he had a Will and there was no one to execute it.
4. If one of the heirs was a minor with no guardian.

Chapter 3: Concluding the Will

Article 82

The duty of the guardian is concluded in the following circumstances:

1. If the minor dies.
2. If the minor turns eighteen years of age, unless the court decided that the guardianship should continue.
3. If the guardianship reverts back to the father or the grandfather after it was taken from them.
4. If the work for which the guardian was installed concludes or if the period designated for the appointment of the temporary guardian expires.
5. If his resignation is accepted.
6. If he loses capacity.
7. If he is lost.
8. If he is recused.

Article 83

1. The legator may remove guardian(ship) from a Will, even if it was without his knowledge.
2. The judge may not remove the selected guardian without a legitimate/lawful cause. If he cannot do so, he shall add another guardian with him. If he finds that he is completely incapacitated, he shall replace him.

Article 84

The guardian shall be removed in the following cases:

1. If he is convicted of a felony or honour related misdemeanour.
2. If he is sentenced to a custodial punishment (one that restricts his liberty) for one or more years.
3. If there is judicial conflict or familial dispute between him, his descendants, ascendants,
or spouse and the minor, which may create concerns about the interests of the minor.

4. If the court finds that the work of the guardian or his negligence may threaten the interests of the minor.

5. If ..... is discovered in the ..........’s accounts .... إذا ظهرت في حسابات ....

Chapter 9
On Inheritance Provisions

الوصي خيانة. Translator: It appears that these two words are the missing text under item 5 of Article 84 hereof. As such, item 5 should read: If treachery is discovered in the guardian’s ...

Article 85
The guardian shall be removed if he loses a condition for capacity from the date it is lost. [Translator’s note: There is a typo here – I believe the word should be فقده and not نقده]

إنعزل الوصي إذا فقد أحد شروط الأهلية من تاريخ نقده إياه.

Article 86:
A. There are three pillars for inheritance:
   1. The testator: the deceased person
   2. The heir: the living person who is due the inheritance
   3. The inheritance (estate): the assets/property of the deceased which are taken by the heir.

B. The two causes of inheritance are blood relations and valid marriage.

C. There are three conditions for inheritance:
   1. The death of the testator, in fact or by judgement (de facto or de jure)
   2. The heir is alive after the death of the testator.
   3. Knowledge of the inheritance.

Article 87:
The rights relevant to the estate after the death of the testator are four, prioritized as follows:

1. Shari’a processing of the deceased (getting him ready for burial).
2. Payment of debts, taken from the total assets.
3. Implementation of Wills, taken from a third of the remaining assets
4. The remaining property shall be given to those who are entitled thereto.
Article 88:
The persons entitled to the estate are the following groups:
1. Heirs by blood relations
2. Heirs recognized in their lineage
3. Persons legated to collect property
4. Treasury

Article 89:
Heirs by blood relations and how they inherit:
1. Parents, children and grandchildren. Males shall receive twice the share of females.
2. Grandfather, grandmothers, brothers, sisters, and nieces and nephews.
3. Paternal uncles and aunts, sisters, maternal uncles and aunts, and uterine relatives.
4. Full (whole) blood sisters shall be considered as full (whole) blood brothers in blocking inheritance.

Article 90:
Subject to the above, the dues and shares shall be distributed among the blood relatives in accordance with the Shari’a controls that were enforced before the promulgation of the Personal Status Law No. 188 of 1959, according to the remaining inheritance provisions.

Article 91:
1. The husband with an ascendant inheriting his wife shall be due a quarter and shall be due half when there is no ascendant. The wife shall be due an eighth when there is an inheriting ascendant and a quarter when there is no ascendant.
2. The girl or girls, if there is no son for the deceased, shall be due the remaining estate, after the parents and the other husband receive their due share. The girls shall receive the entire estate when there are none of them. (24)

Article 92:
All legislative provisions contradicting the provisions of this Law shall become null and void.

The Sovereign Council ...

The Law

Article 93: This Law shall come into force on the date of publication in the Official Gazette.

Article 94: The Minister of Justice shall enforce this Law.

Drafted in Baghdad on the nineteenth of Jumada Al Thani of 1379 Hijri, corresponding to the nineteenth of January 1959.

Rationale

The Shari’a-based provisions for personal status had not been promulgated in a single law that combines the agreed upon jurisprudence which is most appropriate for the times. The Shari’a judiciary had relied in its decisions on jurisprudence books and fatwas (Legal opinions or rulings issued by Islamic scholars) in issues that were disagreed upon and the judiciary of the courts in the Islamic countries.

The multiple sources for the judiciary and the different decisions made family life unstable and did not safeguard individual rights. This prompted thinking of promulgating a law that combines the most important agreed upon Shari’a provisions.
For this purpose, committees were formed that attempted to combine and unify Shari’a-based provisions and produce a law that brings together the agreed upon opinions. However, these committees did not arrive at an acceptable result in the attainment of this purpose.

Since the revolution of the 14th of July, a priority objective was a unified personal status law that would form the foundation for the Iraqi family in its Shari’a-based rights and international independence.

In fulfilment of this objective, the Ministry of Justice formed in its order no. 650 dated 7/2/1959 the personal status bylaws/regulations committee which drew its principles from the agreed upon Islamic Shari’a-based provisions and the precedence of the Shari’a judiciary in Iraq.

The outcome of the Committee’s work is to produce this law, which covered the main jurisprudence areas relevant to personal status, combining issues of marriage, divorce, birth, lineage, custody, alimony, wills and inheritance.

Following are the main provisions adopted by the Committee from the Civil Code and the laws of the Islamic countries, either based on the Shari’a jurisprudence or without conflict with its provisions:

A – The Committee adopted the provisions of Article 1 of the Civil Code after drafting it in a manner harmonious with the Shari’a-based principles. It made the provisions of this Law applicable to the issues addressed explicitly or implicitly.

B - The Committee created a base for the application of the provisions on persons, so that its provisions include all Iraqis, except those excluded by a special Law. Thus, the Personal Status Law is the general law in its principles and provisions, while the other personal status laws are special laws.

C – The Committee found that the general rules in the Civil Code on conflicts of laws, in terms of spatial jurisprudence, (Articles 19 to 24) are rules that do not contradict with the Shari’a-based principles. These are regulatory rules that must be considered in personal status provisions. The legislator in the second article provided for the necessity of application.

D – The Committee found that the laws of the Islamic countries ruled in two directions on
polygamy. It was absolutely prohibited by the Tunisian legislation and is punishable (Article 18) and the Moroccan legislation attributed the prohibition to fear of injustice (Article 30). The Committee chose a middle ground, prohibiting in Article 3 polygamy, unless permitted by the judge, and associating the permission with the husband enjoying financial sufficiency/solvency to support more than one wife as well as legitimate interest. It also prohibited polygamy if there are concerns on injustice, leaving it to the discretion of the judge. Moreover, the committee provided for a penalty of one-year imprisonment or one hundred dinars fine for anyone in violation of this stipulation.

E - On the provisions of divorce, the Committee applied what has been agreed upon in terms of recognizing (verbalised) divorce in its Shari’-based wording, counting the (verbal) divorce associated with the word “three” as one divorce only”, and legislating separation on the grounds of ailments, disagreement, harm and failure to support (provide for the wife) in order to prevent arbitrariness on the part of the husband in using his right to divorce.

F – The Law allowed judges to permit the renewal of the custody period if they find that the interests of the child necessitate this, which is the general practice in the legislation of Islamic countries and in recent fatwas.

G – The bylaws/regulations considered that the male’s pursuit of an education is a requirement for support.

H – The Committee also took into account harmony between the Civil Code provisions on will with the provisions of these bylaws/regulations.

I – The variance in the inheritance provision, in property percentages for example, results from the differences in interpretations by different schools of faith in the transfer of heirs’ rights. This required a unification of rules, which led some critics to criticize the laws and Shari’a rules, while made others unduly embrace different religions/creeds/doctrines … etc. As the revolution aimed to unify the laws and establish a stable society in its rules and duties, unified provisions on property transfer were required, in harmony with the provisions of transfers in family land, legislated long-time ago, accepted by the people, and widely applied. Consequently, the Committee decided to take the rules outlined in the Law as a foundation for inheritance in real estate and transferrable/movable assets, as they are not too different from the Shari’a-based provisions.

J – The Committee strove to include in this bylaw/regulation (law) the main principles on the
provisions of personal status, while giving the judge latitude to revert back to longer/detailed texts to draw subsidiary decisions/ruleds from the provisions most appropriate to the provisions of this Law. The Committee found it difficult to promulgate a law that combines all general and partial matters.

Margins: (Translator: Not all numbers below are captured in the body of the document)

(1) The Law No. 188 of 1959 was published in the Iraqi Gazette (Al-Waqai’ Al-Iraqiyyah), Issue no. 280 on 30/12/1959.

(2) Returning a divorced wife to her husband’s bond of matrimony is not considered polygamy for the purposes of paragraphs 4 and 5 of Article 3 of the Law, if the husband had married another woman before returning his divorced wife. This was provided for in the Revolutionary Command Council Resolution No. 174 on 27/1/1982. The divorcing husband was exempted from the condition of obtaining approval from his department? (دائرته) with regard to returning his divorced wife if the laws that the husband is subject to required this approval before constituting the marriage. This is provided that such provisions apply to cases of marriage that were entered into before its entry into force.

(3) Paragraph (7) was added at the end of Article 3 of the Law No. 189 of 1980, the sixth-amendment law.

(4) Paragraph 1 of Article 7 was repealed and replaced with another provision in accordance with Law No. 21 of 1978, the second amendment law.

(5) Article 8 was removed and replaced with the current provision in accordance with Law No. 21 of 1978, the second amendment law. The said article was then considered the first paragraph for it and the second paragraph was added in accordance with Law No. 90 of 1978, the twelfth amendment law.

(6) Article 9 was repealed and replaced with the current provision in accordance with Law No. 21 of 1978, the second amendment law.

(7) Paragraph (5) was added to the end of Article 10 in accordance with the Law No. 21 of 1978, the second amendment law, provided this amendment is enforced thirty days from the date of publication.

(8) Article 13 was repealed and replaced with the current provision in accordance with Law No. 11 of 1963, the first amendment law.

(9) A woman shall collect her deferred dowry in the case of divorce, assessed in gold value on the date of the marriage constitution. This was provided for in the Revolutionary Command Council Resolution No. 127 on 24/7/1999.

(10) Paragraph 1 of Article 24 was repealed and replaced with the current provision in accordance with Law No. 19 of 1999, the sixteenth amendment law.
(11) Based on the amended Article 1 of the Divorced Woman’s Right to Housing No. 77 of 1983, the court must consider the suit on divorce or separation by asking the wife if she wishes to stay as a resident after the divorce or separation in the house or apartment that she lived in with her husband on an independent basis if it is owned in whole or in part by him, or rented. The court shall dispose on this point with the decision disposing on the case, … etc.).

(12) Article 25 was repealed and replaced with the current provision in accordance with Law No. 57 of 1980, the fourth amendment law. This should be enforced on the date of publication in the Official Gazette and its provisions shall apply to the decisions that have not become final. The Revolutionary Command Council Resolution No. 1357 on 9/12/1984 stipulated that the provision of item B of paragraph 2 of Article 25 of this Law shall not apply to husbands mandated with obligatory military service or reserve service, as long as they perform such service. This Resolution stipulated that it shall come into effect on the date of publication in the Official Gazette, its impact shall apply on the suits where decisions have not become final, and it shall be valid throughout the war period.

(13) Article 26 was repealed and replaced with the current provision in accordance with the Law No. 19 of 1999, the sixteenth amendment law. Then paragraph 4 was added to the same law in accordance with the Law No. 22 of 1999, the seventeenth amendment law.

(14) Article 34 was repealed and replaced with the current provision in accordance with Law No. 156 of 1980, the fifth amendment law.

(15) Paragraph 3 was added to Article 39 in accordance with the Law No. 51 of 1995, the ninth amendment law, to come into effect on the date of publication in the Official Gazette. This shall apply to the suits where no final decision has been made.

(16) Chapters 2, 3 and 4 of Part 4 of the Law were repealed and replaced with the current provision in accordance with the Law No. 21 of 1978, the second amendment law. This amendment included the replacement of articles 40-45 and provided for chapter five of part four to become its third chapter. The phrase “Adultery shall include the husband’s practice of homosexuality in any form” (in accordance with the Law No. 125 of 1981, the seventh amendment law.

Paragraph 1 of Article 40 was repealed and replaced with the current provision in accordance with the Law No. 5 of 1986, the tenth amendment law.

(17) The paragraph “Third” was added to Article 43 in accordance with the Resolution of the Revolutionary Command Council No. 1128 on 21/9/1985. A new paragraph was added, numbered “Fourth” in accordance with the Law No. 8 of 1994, the fourteenth amendment law. The item 3 was repealed from paragraph “Fourth” which was added in accordance with Law No. 25 of 1994, the fifteenth amendment law,
(18) Chapter five of part 4 was considered a third chapter of the same part in accordance with Law No. 23 of 1978, the second amendment law.

(19) Article 57 was repealed and replaced with the current provision in accordance with the Law No. 21 of 1978, the second amendment law. Paragraph 9 was repealed and replaced with the current provision in accordance with the Law No. 65 of 1986, the eleventh amendment law. Paragraph 2 was amended in the Law No. 106 of 1978, the thirteenth amendment law.

(20) The phrase “and inheritance” was removed from the title of the first chapter of the eighth part of the law in accordance with the Law No. 11 of 1963, the first amendment law.

(21) Article 74 was repealed in accordance with the Law No. 11 of 1963, first amendment law. A new provision was added to Article 74 in accordance with Law No. 72 of 1979, the third amendment law. This amendment will be enforced from the date of publication in the Official Gazette and its provisions shall apply to the deaths of grandparents and grandmothers which take place after its enforcement.

(22) Part nine was added to the Law after Article 85, and the sequence of the following articles was amended accordingly in accordance with the Law No. 11 of 1963, the first amendment law. The articles added in accordance with the aforementioned amendment law are 86, 87, 88, 89, 90 and 91.

(23) Paragraph 4 was added to the end of Article 89 in accordance with the Law No. 34 of 1983, the third amendment law. This law shall be enforced from the date of publication in the Official Gazette. Its provisions shall apply to the deaths that take place after its enforcement.
(24)Paragraph 1 of Article 91 was considered the article itself and a paragraph 2 was added in accordance with the Law No. 21 of 1978, the second amendment law.