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ENGLISH TRANSLATION

SHIITE PERSONAL STATUS LAW

APRIL 2009

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**General Administrative Affairs Department**  
Department of Parliamentary Affairs and Taqneen

Annex 265

Number: 51141828

Date: 11/23/1387

To: Esteemed Department of the House of the Elders!

The House of Representatives during its general session dated 11/19/1387 approved the personal status law of the Shiite sect of Islam as following:

“The Supreme Court of Afghanistan based on article one hundred thirty one of the Constitution shall provide the opportunity for the implementation of the Shiite personal status law, after consensus by the Shiite and Sunni scholars with omission of some of the article, includes 249 articles.

“This order does not require a separate court or separate judges.”

Regards,

Mohammad Younis Qanuni  
Speaker of the Lower House



Original text	Amendments
<b>Chapter 6</b> Temporary Marriage	<b>Chapter 6</b> is omitted completely
<b>Paragraph 7, article 71</b> (7) a divorced childless wife who has not had sexual intercourse or is a minor [child] does not have ( <i>edat</i> ) [the waiting period]	(7) A divorced wife who has not had sexual intercourse does not have <i>edat</i> [the waiting period].
<b>Paragraph 3, article 194:</b> A mother gets preference over the father to have custody of her daughter until age 7 and that of her son's until age 2. After that the child's custody belongs to the father.	<b>Paragraph 3, article 194:</b> A mother gets preference over the father to have custody of her daughter until age <b>9</b> and that of her son's until age <b>7</b> . After that the child's custody belongs to the father.
<b>Paragraph 9, article 224:</b> (9) If the inheritor of a deceased person is a paternal step sister or a maternal step sister, she will inherit 1/2 and if several paternal and maternal sisters are the inheritors 2/3 will be inherited.	<b>Article 224:</b> From article 9 the following words shall be omitted. - Or one maternal sister or several maternal sisters.
Additions: ...	<b>Paragraph 10 of this article shall be changed to paragraph 11.</b> (10) If an heir of a deceased person is a maternal sister she will inherits 1/6 and if there is no other heirs, she is entitled the remainder. And if the heirs are two or several maternal sisters, 1/3 is inherited as <i>Farz</i> or fixed share and if there is no other heirs they can inherit the remainder by relations.
<b>Paragraph 2, article 90:</b>	Omitted
<p style="text-align: center;"><b>Chapter 4</b></p> <p style="text-align: center;"><b>Condition for the legality of marriage contract</b></p> <p style="text-align: center;"><b>Legality of incapacitated persons</b></p> <p>Article 99 (1):</p> <p>(1) The marriage contract of a minor male and a minor female and insane male and insane female by compulsory guardian (who has best interest of the ward), or authorized custodian or [marriage] by court in the absence of a compulsory guardian and authorized custodian while considering the interest of the ward is legal.</p> <p>(2) Minor male and female after legal adolescence and insane male and female after gaining/regaining sanity can revoke the marriage contract which was contracted by persons mentioned in paragraph one of this article.</p>	<p>(1) The legal marriage age for a female is 16 and for a male is 18 (based on the solar calendar).</p> <p>(2) Approval of adolescence and legal capacity, for marriage prior to the mentioned ages, by guardian before the court is possible [valid].</p> <p>(3) The marriage contract of minor male and minor female and insane male and insane female, without necessity and if not in the best interest of the ward contracted by the guardian in a court, is prohibited.</p> <p>(4) Minor male and female after legal adolescence and insane male and female after cure can revoke the marriage contract which was contracted by persons mentioned in paragraph one of this article</p>
<b>Article 133:</b> addition.....	<b>Paragraph 5 is changed to paragraph 6 of this</b>

	<p><b>article.</b>  (5) A wife can leave the house for legal purposes to the extent that local custom allows. Husband and wife can prevent each other from any action that is deemed against the Sharia and the law.</p>
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**In the name of Allah, the Beneficent, the Merciful**

Shiite Personal Status Law

Competence and Personality

**PART I: COMPETENCE AND PERSONALITY**

**CHAPTER ONE: GENERAL PROVISIONS**

The Basis

**Article 1:**

This law has been enacted in accordance with article 131 of the Constitution of Afghanistan for regulating the Shiite Personal Status Law.

Implementation of this Law

**Article 2:**

(1). To implement this law in the courts, the Supreme Court of the Islamic Republic of Afghanistan shall appoint eligible Shiite judges.

(2). When issues arise that are addressed by the provisions of this law, the court shall decide accordingly, and *Ijtihad* [derive and deduce religious opinion about some matter] shall not be allowed.

(3). When issues arise that are not addressed by the provisions of this law, the court shall decide in accordance with *Ja'fari* jurisprudence based on a current, valid Shiite *Marja Taqlid Fatwa* [a recognized religious authority that issues ruling on a point of Islamic law]

Whenever the plaintiff and defendant select different *Marja Taqlid Fatwas*, issues/cases dealing with victim's rights shall proceed in accordance with the plaintiff's *Mujtahed's Marja Taqlid Fatwa*; issues/cases dealing with public rights [*Hoquuqallah*] shall proceed in accordance with the defendant's *Mujtahed's Marja Taqlid Fatwa*.

(4). Whenever plaintiff and defendant are followers of different religions, or different sects of the same religion, and their respective religious provisions contradict; issues/cases dealing with public rights [*Haqallah*] shall proceed in accordance with the religion of the defendant; issues/cases dealing with victim's rights shall proceed in accordance with the religion of plaintiff.

**CHAPTER TWO: COMPETENCY**

Definition and Types of Competency

**Article 3:**

(1). Competency is the inherent authority through which a human obtains his/her rights and obligations, starting from birth and ending with actual or legal death. There are two types of competency:



1. Possessive Competency is the authority [capacity] of a person to obtain their rights and entitlements. This also includes those who are deceased, insane, incompetent, and a fetus.
2. Utilization Competency is the authority [capacity] of a person to execute and/or benefit from the use of his/her rights.

(2). A person is a real or legal entity with all the rights and obligations allowed or required by law.

#### Depriving the Right of Possessive Competency

##### **Article 4:**

(1). Possessive Competence cannot be taken away, however based on provisions of this law the court does have the authority to temporarily restrict a person from exercising a right or specific rights.

(2). No one can divest [give up] their competency or their authority to exercise all or part of his/her civil rights or the right that he/she has obtained according to law.

(3). Under certain circumstances a person may choose not to exercise his/her rights (such as relinquishing his/her rights related to a specific purchase transaction), or during a specific period of time (such as pledging not to marry until specific time) or from his/her partial right(s) (such as not buying a specific home).

#### Competency and Rights of a Pregnancy and a Fetus

**NOTE:** The Dari terms “pregnancy” and “fetus” refer to different stages of development within a pregnancy - “fetus” is used until human features appear, thereafter the term “pregnancy” is used.

##### **Article 5:**

(1). If the pregnancy results in a live birth, the fetus obtains competency at conception. In cases where there is a question as to whether live birth occurred, there must be confirmation as to whether the baby was in fact born alive.

(2). The fetus and pregnancy has the following rights:

1. Will become an heir, if born alive.
2. To be the subject of a confession.
3. Will be eligible to receive donation.
4. Abortion is forbidden, and the person performing the abortion will be liable to pay *dia* [blood money and compensation paid to the victim].
5. Parents must provide for available medical treatment for that [fetus].
6. Parents are prohibited from acting contrary to medical advice when that action may result in any kind of disability to the fetus.

#### Rights of the Deceased



**Article 6:**

- (1). A deceased person has possessive and other rights pertaining to the following issues:
  1. To be the subject of a confession.
  2. If the deceased was murdered, *dia* shall be given to the deceased's estate, if aggravating circumstances or other crimes result in additional *dia* it will also be given to the deceased's estate, however, this *dia* shall not convey to the deceased heirs and shall be used to pay the deceased's debts or for *Khayrat* [in this context, charity means burial and funeral expenses].
  3. Up to 1/3 of the deceased's estate may be conveyed by a separate Will.
  4. Deceased has the right to have the cost of his/her burial paid from his/her estate.
  5. At the conclusion a limited *Waqf* [religious endowment], assets donated under the limited *Waqf* shall be returned to the deceased's estate or his/her heirs.
- (2). The deceased's Will shall be enforced according to this law.
- (3). Autopsies are forbidden, unless the deceased gave prior permission, or a justice or judicial organization [a Court] grants permission for the autopsy in order to determine the facts relating to the cause of death.

Maturity [of the mind]

**Article 7:**

- (1). Maturity is the mental ability of a person to deal with financial transactions in a way that avoids unfairness or injustice to him/herself; those persons lacking this ability cannot possess Utilization Competency in dealing with assets.
- (2). Maturity shall be determined by a Court.
- (3). An incompetent person or a person having insufficient competency [those persons lacking Maturity] are subject to the provisions on Guardianship and Executor stated in this law.

**CHAPTER THREE: ABSENT [MISSING] PERSONS**

Definition of Absent Persons

**Article 8:**

This chapter includes the following definitions:

- (1). Absent Person **Known** to Be Alive is someone who is absent but known to be alive, although his/her location may not be known and contact may or may not be possible.
- (2). Absent Person **Unknown** to Be Alive is someone who has been absent for an extended period with no information available regarding whether he/she is alive or deceased.

Absent Person Known to Be Alive and Person Unknown to Be Alive

**Article 9:**



(1). If an Absent Person **Known** to Be Alive does not have an attorney or agent who will manage his/her goods, the Court, on its own motion or as result of a claim by an interested party or parties, shall appoint a trusted person or persons as a Trustee and Supervisor to manage the assets of the Absentee Person **Known** to Be Alive, including payments to creditors while also preserving the value of any assets.

(2). If an Absent Person **Unknown** to Be Alive has selected an attorney or a person (guardian, executor, or caretaker), bound in accordance with the law, to manage his/her assets, this responsibility will remain in effect until the Absent Person **Unknown** to Be Alive returns, dies or is declared deceased, or the attorney, guardian, executor, or caretaker dies or their authority has been withdrawn.

(3). If an Absent Person **Unknown** to Be Alive has not assigned an attorney to manage his/her assets or the person assigned to manage his/her assets based on the provisions of law, but is not available, the Court, on its own motion or as result of a claim by an interested party or parties, shall appoint a trusted person or persons as a Trustee and Supervisor to manage the assets of the Absent Person **Unknown** to Be Alive.

#### Preservation and Supervision of Absent Person's Assets

##### **Article 10:**

(1). The preservation and supervision of an Absent Person's assets inside the country, prior to the appointment of a trustee shall be the responsibility of a local Shiite scholar who is an agent of the Shiite *Mujtahed*[clergy practicing religious jurisprudence].

(2). The preservation and supervision of an Absent Person's assets located outside of Afghanistan prior to the appointment of a trustee shall be the responsibility of the Embassy or Consulate of Afghanistan. The Embassy or Consulate shall appoint an interim trustee and refer the matter to the Supreme Court via the Ministry of Foreign Affairs.

#### Characteristics of a Trustee

##### **Article 11:**

(1). A Trustee shall have the following characteristics:

1. Utilization Competency in order to manage assets and financial transactions.
2. Sufficient ability to preserve and manage the assets of an Absent Person.
3. Can provide adequate surety
4. No law suits or criminal complaints filed [by the Trustee] against the Absent Person.
5. A court decision declaring the Trustee is neither broke nor bankrupt.

(2). An heir meeting the conditions set forth in Paragraph 1 of this article, shall have priority over others.

#### Types of Supervisors

##### **Article 12:**





(1). Based on the provisions of this chapter the Supervisor is a person appointed by a court to supervise the performance of a trustee. There are two types of Supervisors:

1. *Esteswabi* Supervisor approves [person who makes the right decision in the interest of the other person] the actions of a Trustee and may provide such approval both prior to and after a Trustee's action.
2. *Etlae* Supervisor receives reports on the Trustee's action's regarding the management of the Absent Person's assets; but he/she [Trustee] may act contrary to the intentions of him/her [Supervisor].

(2). *Etlae* Supervisor shall report, to the Court, any illegal activity or fraudulence by the Trustee.

### Responsibilities of the Trustee

#### **Article 13:**

(1). The Trustee has the following responsibilities:

1. Manage carefully and preserve the assets of the Absent Person.
2. Safeguard the Absent Person's interests during the sale, change or use of assets with a limited useful life or that may expire [lose value].
3. Pay Maintenance to those persons for whom the Absent Person is/was responsible; and paying his/her [Absent Person's] debts.
4. Pay valid fee(s) of the person(s) who managed and preserved the Absent Person's assets prior to the appointment of the Trustee, or who provided services that preserved assets.
5. Collect debt payments due to the Absent Person and receiving assets he/she [Absent Person] inherits. If a debtor denies [disputes] a debt, the Trustee may sue the debtor, but there should be no settlement that is not in the interests of the Absent Person.
6. With Court permission and when no other option is available, sell the Absent Person's immovable property to satisfy a debt(s) or pay Maintenance obligations.
7. Perform all those obligations of the Absent Person which are possible [for the Trustee] to perform.
8. Provide to the Court an annual report and accounting of assets; including a final report and accounting at the end of his/her appointment.
9. Shall not buy the assets of the absent person for himself or his family or sell his and his family's assets to the Absent Person without permission from the court.

(2). The Trustee will be liable for losses resulting from negligence or actions exceeding the Trustee's scope of authority set forth in Paragraph (1) of this Article. If the Trustee acts with criminal intent, he/she may also be subject to prosecution.

### Removal of Trustee and Supervisor

#### **Article 14:**

The trustee and supervisor shall be removed by the court in the followings circumstances:



1. In the case of the non-existence of any conditions set forth in Article 11 of this law.
2. In the case of the intentional non-performance of duties or showing negligence in this regard.
3. In the case of a violation of duties or the unlawful possession of the assets of the absentee.

#### Discharge of Duties of Trustee and Observer

##### **Article 15:**

(1). The responsibilities of the trustee and the supervisor shall be discharged in the following circumstances:

1. When the absentee appears.
2. When the actual death of the absentee is determined.
3. When the death of the absentee is determined by court order.

(2). The court, after the passage of 10 years from his/her disappearance or after four years of searching with the permission of the court with no evidence of his/her whereabouts, may issue an order distributing the estate of the absentee among the heirs.

(3). The wages of the trustee and the supervisor shall be paid by the court from the property of the absentee.

#### Conditions for Determining the Legal Death of the Absentee

##### **Article 16:**

In any of the following circumstances, the heirs, the guardian, the executor or a legatee can demand that the court issue an order determining the legal death of an absentee:

1. A long period of time has passed from the last news of the existence of the absentee that demonstrates that the absentee is probably dead, or naturally will not survive for an extended period of time.
2. If a group of persons dies in an accident and the absentee is assured to have been among them.

#### Consequences of a Determination that the Absentee is Legally Dead

##### **Article 17:**

The consequences of a determination of the absentee's legal death are as follows:

1. Discharge of the security of the trustee.
2. Distribution of the assets of the absentee among the heirs when the legal death of the absentee is determined.
3. Execution of a will or testament in accordance with the provisions set forth in this law.
4. Payment of the delayed debts of the absentee by the heirs.



5. Dissolution of the marriage contract between the absentee and his spouse after four years of unsuccessful searching for the absentee with the permission of the court; provided that the spouse shall be subject to the waiting *edat* [waiting period] in accordance with the provisions set forth in this law.
6. If the spouse is certain that the absentee is dead, then the marriage contract should be dissolved without any specific time period and without searching; in that case the spouse shall observe the death *edat* [four months and 10 days].

#### Determining Death or Life of the Absentee, after the Court has issued an Order Determining that the Absentee is Dead

##### **Article 18:**

(1). If after the issuance of an order determining that the absentee is dead, his/her actual death is proved, or if it is determined that before the issuance of the order determining the death of the absentee by the court, that the absentee was alive, the actions that were carried out for the protection of the absentee's assets shall be void.

(2). If the date of actual death causes any changes in the asset distribution or any other legal activities the court shall take into consideration these changes; for example, if the number of heirs decreases, the heirs who do not have Fixed Shares [specified in Quran] shall be deprived from having possession [the assets of the absentee] and shall be distributed to actual heirs.

(3). If after the issuance of the order determining the death of the absentee, it is determined that he/she is alive, the assets which were distributed to the heirs or legatees shall be returned in its original form if they exist, and if the asset no longer exists, they shall return goods of similar value.

#### Maintenance of the Spouse of the Absentee

##### **Article 19:**

If the spouse of the absentee is being supported by the assets of the absentee or by his father or grandfather, then based on the presumption that the absentee is still alive, the spouse shall wait until she receives news that the absentee is actually dead; however, if the spouse is receiving maintenance from others she does not need to wait for news of the actual death of the absentee.

#### Wife's Second Marriage and her Maintenance

##### **Article 20:**

(1). If the wife is certain about the death of the absentee husband and after the court has issued an order determining the death of the absentee, and she waits until the expiration of *edat*[four months and 10 days], and even after she remarries [the absentee appears], the first marriage shall exist and the second shall be invalid; however, if the women has had sexual intercourse with the second husband, she shall complete her *edat*. If after four years of searching based on the order of the court and after dissolution of the marriage contract and completion of the *edat*, the absentee appears [the appearance] may not effect the dissolution

of the first marriage contract; however the spouse has the option to stay with the first husband or remarry; but after the completion of the *edat*, the spouse remarries, the second marriage contract will remain in place.

(2). If the existence of the absentee has been determined, the spouse is entitled to maintenance for the four year searching period, based on the issuance of a court order the wife is entitled to maintenance until the end of her *edat*.

#### Revocability of Court Divorce

##### **Article 21:**

A divorce by court order is revocable. If the absentee appears before the expiration of *edat*, he is eligible to rejoin his spouse, but the spouse shall pass the death *edat* (waiting period of four months and ten days).

#### News of Actual Death

##### **Article 22:**

If the news of the actual death of the absentee comes during the period of the four year search, or after its expiration and before the completion of the *edat*, the spouse shall complete the death *edat*.

#### Death of Wife During *Edat* [waiting period of four months and 10 days]

##### **Article 23:**

If the spouse, during the death *edat*, dies and later the news of the absentee's actual death or being alive comes, they shall inherit from each other.

#### Lack of Authority of the Attorney

##### **Article 24:**

If an attorney does not have authority and permission to fulfill the civil and social obligations of the absentee, for any certain matter; the court may assign the same attorney, or another person, for that [the abovementioned circumstances].

## **CHAPTER FOUR: LEGAL INCOMPETENCE**

#### Definition and Types of Legal Incompetence

##### **Article 25:**

(1). In the context of this chapter, legal incompetence is the inability or deficiency in the capacity of a person to exercise financial rights or to utilize property or assets which are determined by this law.

(2). A legal incompetent is a person that due to his/her mental inability is forbidden to manage his or her own property and he or she is also forbidden to use his or her property or legal rights.



(3). Legal incompetence is of two types:

1. *Masloob-ul-Elabara* (One who is banned from expression) *Masloob-ul-Elabara* is a person whose actions and expressions in a contract and other decisions are invalid.
2. A legal incompetent in action is a person who does not have the right to exercise his or her financial rights or use his or her property.

### Grounds for Incompetence

#### **Article 26:**

The grounds for incompetence are as follows:

1. Being a minor
2. Insanity
3. Imbecility
4. Drug addiction
5. Mental illness

### Signs of Maturity

#### **Article 27:**

When a boy reaches the age of 15 or ejaculates and a girl sees the blood of her menstruation, they are considered to have reached puberty.

### Definition of Insanity

#### **Article 28:**

(1). Insanity is an illness that causes derangement of the mind or lack of intelligence in a person and can be of two kinds:

1. Periodical insanity.
2. Permanent insanity.

(2). The insanity that proves the inability of the insane person in the exercise of their financial rights and use of assets shall be considered a reason for legal incompetence.

(3). The exercise by an insane person of his or her property or financial rights is invalid. A periodically insane person during his or her periods of sanity shall be excluded from this provision; however if there is a dispute over his or her competency, the periodically insane person shall be assumed to be competent.

### Definition of Imbecility

#### **Article 29:**

(1). An imbecile is a rational and mature person whose ability to reason regarding the management of property and financial rights is not equal to the reasoning capabilities of a normal person as known by tradition.



(2). The exercise by an imbecile in financial rights and use of property, even if the imbecile is in control, shall be void.

(3). Nonfinancial exercise by an imbecile shall be valid unless it has a financial effect; for example, a marriage and reconciliation; in that case a guardian shall determine and take control.

#### [Definition of] Drug Addiction

##### **Article 30:**

(1). Drug addiction is a kind of illness in which a person as a result of using a psychotropic substance loses the conscious ability and causes disturbance of his or her intentions.

(2). Exercise of the addicted in property and financial rights set forth in paragraph 1 of this article shall be void.

#### Mentally Disordered Person

##### **Article 31:**

(1). A mentally disordered person is someone who does not have the ability to reason in all affairs of his/her life.

(2). The acquisition and exercise of property and financial rights by a mentally disordered person stated in paragraph 1 of this article is invalid.

#### Bankrupt

##### **Article 32:**

(1). A person who is bankrupt is someone whose debts are more than his/her assets.

(2). The court shall determine the bankruptcy of a person based on the following conditions:

1. If the court determines his/her debts.
2. His/her current debts are more than his/her properties.
3. In case that the creditors ask the courts for confinement of the property and banning of financial acquisition of the bankrupt.

(3). The court shall not order the bankruptcy and banning of financial rights and property of a person unless it is asked by the creditors of the debtor.

(4). Issuance of an order of the court for the bankruptcy of a person shall not change the character of the debts from long-term to present.

#### Possession (of property) by a Bankrupt Person after the Issuance of the Order

##### **Article 33:**

All of the acquisitions of a bankrupt's property and financial rights after the issuance of the order of bankruptcy, which are harmful to the creditors, are invalid. The expenses of the debtor, and the persons whose maintenance depends on the bankrupt person, to the reasonable extent, shall be excluded from this provision.



## Confession of Bankrupt

### **Article 34:**

If a bankrupt person after the issuance of the order of bankruptcy commits or confesses a debt or a contract for the benefit of others, which may harm creditors, the confession is acceptable. However, if the person who accepts the confession is one of the creditors, and the property is divided between creditors, then the confession is not acceptable unless all of the creditors confirm his confession.

## Sale of the Property of the Bankrupt Person by the Court

### **Article 35:**

(1). The court shall issue an order for the sale of all of the properties of the bankrupt person, and the exchange of the property shall be divided among the creditors based on their shares. The following circumstances are excluded in this provision:

1. Residential home as defined by tradition.
2. Transportation as defined by tradition.
3. Means and tools required for the occupation of the bankrupt person.
4. Necessary home appliances.

(2). The assets stated in paragraph 1 of this article are considered exempted if the lack of having them will cause difficulties in the bankrupt's routine life, and as determined by the court.

## Rights of Priority Among the Creditors

### **Article 36:**

If a creditor locates the actual property that the bankrupt person property has purchased from him on credit, he/she can repossess the property, and this creditor has a priority right over the other creditors to receive that actual property.

## No Bankrupt Person shall be Imprisoned

### **Article 37:**

The bankrupt person is required to pay the remaining debts after the distribution of assets as the court determines. The court cannot imprison the bankrupt person because of his or her inability to pay his or her debts.

## Drunkenness

### **Article 38:**

Drunkenness is the state of being intoxicated by using narcotics, alcohol or other intoxicating substance to the extent that a person's mental faculties and his or her will are noticeably impaired for a period of time. Drunkenness results in legal incompetence.

## Prohibition from Unreasonable Possession

### **Article 39:**



The court, if demanded by persons of interest, can ban those who do not regard/observe modesty in spending their personal wealth (property) or spend in an illegal or irrational way or if s/he spends lavishly or extravagantly from a portion of his wealth.

#### Order [of Court] Regarding Legal Incompetence

##### **Article 40:**

(1). The legal incompetence of an imbecile, insane, addicted, or mentally ill person shall be decided whenever signs of any of these conditions are noticed based on the provisions of this law.

(2). If the court decides upon the legal incompetence of a person described in paragraph 1 of this article, the order shall include consideration of the entire time of in which the person was deemed legally incompetent.

#### Acquisition of Property by Imbecile Before Issuance of Order

##### **Article 41:**

If the court issues an order of legal incompetence of an imbecile, in this case the previous exercise by or conduct of the imbecile in the use of property and financial rights that were done during the imbecility are void, provided that the exercises shall not be in favor of the imbecile. Exercises of imbecile are absolutely void because of irrationality.

#### Financial Exercise by Distinguishing Minor [according to juvenile law - one between the ages of 7 and 13. Not mentioned in the this law] and Imbecile

##### **Article 42:**

(1). Independent financial exercise by a distinguishing minor and an imbecile is invalid, while it is valid just by permission of a guardian, an executor or a supervisor. The silence of a guardian, an executor or a supervisor or not declaring the conduct void after becoming aware of an issue and having the opportunity to declare it void, causes validation of the conduct.

(2). When an independent financial exercise by a distinguishing minor or an imbecile does not result in commitment, such as possession of licit goods or accepting gifts without consideration, shall be valid, provided that the gift is received by the guardian of the minor.

#### Liability of Legal Incompetents

##### **Article 43:**

(1). If a person hands over his goods for any reason to a minor, an insane, mentally ill person, or an addict, and the goods are destroyed or damaged by them, the above-mentioned people shall not be liable.

(2). If a person hands over his goods to an imbecile in trust, and the imbecile does not have the right of possession of the goods, in case of the good's damage or destruction, the imbecile shall be liable.





(3). If an undistinguishing minor [under the age of 7 in the juvenile code], an addict, an insane person or a mentally ill person causes any damage to others, compensation shall be recovered from the goods and assets of the person who caused the damage; however, if the guardian is proved negligent in not preventing the damage, then the guardian is liable to provide the compensation.

(4). When a distinguishing minor, an imbecile, or a periodically insane during the time of sanity causes damages to others, they are liable to provide compensation.

#### Intentionally Losing Sanity

#### **Article 44:**

If someone intentionally loses his or her sanity, this action does not release him or her from liability.

## CHAPTER FIVE: GUARDIANSHIP

### Definition and types of Guardianship

#### **Article 45:**

(1). Guardianship, in accordance to the provisions of this law is the power and authority given to a person to perform duties for others in limited circumstances; the person is called guardian while the person in custody is called ward.

(2). Guardianship can be of the following two types:

1. General Guardianship refers to the guardianship of an authorized judge who is responsible for the affairs of a person who is incompetent or has mental deficiencies.
2. Specific [or special] guardianship refers to the guardianship of certain individuals and has two types:
  - *Qahri* or Natural guardianship refers to the guardianship of father and paternal grandfather over the ward.
  - *Khaas* or Appointed guardianship: a person appointed by the father or paternal grandfather for the affairs of the ward.

(3). The guardianship of the father or paternal grandfather is in accordance with the law and it does not need authorization by the court.

### Persons under Special Guardianship

#### **Article 46:**

(1). Special guardianship shall be exercised on the following persons:

1. Minor.
2. Person with mental illness from childhood.
3. Imbecile, whose mental capacity is low either since childhood or afterwards.

(2). Exercise of specific guardianship on a mentally disabled person or imbecile, whose mental incapacity or insanity occurs after childhood, requires a court order.

### Guardianship [of a Ward] by the Father and Paternal Grandfather

#### **Article 47:**

(1). Guardianship of a ward by the father and paternal grandfather is the same, and the exercise of either of them in the use of the ward's assets is valid and cannot be invalidated by the act of the other. In case of dispute between the father and grandfather in a ward's affairs, the grandfather has priority over the father.

(2). The father or paternal grandfather in the absence of each other, with the permission of the other, or when one of them has become legally incompetent, can appoint an executor on their behalf in regard to the ward; however, as long as any of them have guardianship qualifications and they are alive, the other cannot appoint another executor.

### Requirements for a Special Guardian

**Article 48:**

(1). The special guardian shall meet the following requirements:

1. Must have reached puberty
2. Be mature.
3. Be of the same religion.
4. Be trustworthy with respect to the ward's property.

(2). If a special guardian does not meet the requirements set forth in paragraph 1 of this article, the court shall appoint a protector for the ward.

Appointed Guardian's Authority

**Article 49:**

The natural guardian shall determine the limitation of the appointed guardian's authority; any action by the appointed guardian outside of this authority is determined invalid. The appointed guardian by permission of the natural guardian shall be authorized to determine another appointed guardian.

The Jurisdiction of the Court over Assigning a Trustee

**Article 50:**

(1). The court, if requested by persons of interest, and even if there is a special guardian, may, in the following circumstances, appoint a trustee over the possessions of the ward:

1. If the guardian is not competent to manage the possessions properly
2. If the guardian disappears
3. If the guardian is proved to be dishonest

(2). If the trustee's reason for appointment is no longer necessary, by request of interested persons, the guardian and the court shall dismiss the trustee.

Circumstances wherein the Guardianship of the Special Guardian becomes Invalid

**Article 51:**

(1). Under the following circumstances, the guardianship of the special guardian shall be revoked, and the court upon request by interested persons shall appoint a protector:

1. If the special guardian becomes legally incompetent.
2. If the court disqualifies the special guardian on basis of incompetency or breach of trusteeship.

(2). In case of revocation of the elapse circumstances of the guardianship mentioned in paragraph 1 of this article, the special guardian shall be competent to retain his guardianship.



## Protectorate

### **Article 52:**

(1). The protector is a trustee person who is appointed by the court in order to manage the affairs of a ward and his/her assets. Execution of general guardianship by him is called protectorate.

(2). The court on its own motion, or upon the request of an interested person, shall appoint a protector for the ward if he/she does not have a special guardian.

## Wards' Management of Property Before Determination of a Protector

### **Article 53:**

(1). Ward management of property before determination of a protector by the court, is the responsibility of local Shiite scholars, and for the ward's property abroad, the embassy and consulate shall determine a temporary protector.

(2). The embassy or the consulate shall proceed according to paragraph (2) article 10 of this law.

## Determination of a Supervisor and a Protector

### **Article 54:**

(1). The court in case of appointing several protectors; shall specify the limits of authority of each of them.

(2). The court shall appoint a person or persons as supervisor in accordance with article 12 of this law.

(3). In case of any dispute arising between supervisors and protectors or protector and supervisor, determining a solution is the responsibility of the court.

(4). The court can appoint a protector over several wards.

## Condition of Being Protector

### **Article 55:**

The protector shall meet all requirements of article 11 of this law. Relatives of the ward, in case of meeting the requirements, shall take priority compared to others in order to be assigned as a protector.

## Appointing a Woman as a Protector

### **Article 56:**

Whenever a [divorced or widow?] woman, including a ward's mother, is appointed as a protector, in case of remarriage she is obligated to report to the court and the court may either dismiss her from the protectorate or assign a supervisor over her activities.

## The Protector's Options to Accept or Reject the Protectorate

**Article 57:**

The court shall inform the protector of the protectorate's decision [him/her appointment as a protectorate]; the protector may accept or reject or may resign the protectorship at anytime.

Deposition of the Protector and Supervisor**Article 58:**

(1). The court within the circumstances mentioned in article 14, shall dismiss the protector or supervisor.

(2). Interested people or the ward, by meeting the conditions set forth in article 14 of this law, may ask the court for the removal of the protector.

(3). The court shall inform the protector of his removal [released from his duties], and the protector's acts shall not be enforceable furthermore.

Guardian's Authority**Article 59:**

(1). The guardian is considered the legal representative of the ward both in property [possessions] and in financial rights.

(2). If the guardian acts against the financial interests of the ward, such actions shall be deemed invalid.

(3). If the guardian leases the ward's property for more than the guardianship period, after the conclusion of the period, the lease enforcement shall be subject to the ward's approval.

Appointed Guardian's Authority**Article 60:**

(1). If the appointed guardian is proven to be acting in the interest of the ward, he/she shall have the following rights by permission of the court:

1. Give up the ward's right of pre-emption.
2. Release debts on behalf of the ward.
3. Solve the disputes of the ward.
4. Practice those acts that are naturally harmful to the interests of the ward, like donations.

(2). The natural guardian may proceed with acts that are set forth in paragraph 1 of this article on condition of proving the harmlessness of the acts.

(3). The guardian cannot conduct acts of *qisas* (eye for an eye) or to pardon any person on behalf of the ward, unless it proves expedient for the ward.

(4). Whenever the guardian mistakenly, in good faith, practices a transaction that ends with the disadvantage of the ward, the guardian shall not be responsible.

Guardian's Responsibilities

**Article 61:**

(1). The guardian is obligated to watch, protect and manage the ward and his/her possessions as well as prevent the occurrence of any legal offenses.

(2). Taking into consideration of the ward’s financial status, the guardian shall be obligated to manage the ward’s affairs in the following circumstances, providing that the ward shall not be under any other person’s guardianship:

1. Taking care of the ward’s cleanliness
2. Safeguarding the ward from harms against his/her body and life
3. Guard the ward from harming others
4. The ward’s medical treatment
5. Ensure education and nurturing opportunities for the ward

(3). Provide career building and vocational training opportunities for the ward (3). In case where a medical doctor advises that the ward should get married, the guardian by permission of the court and taking into consideration of financial status shall facilitate the marriage.

Observation of Trustee’s Duties by the Guardian

**Article 62:**

In managing the ward’s properties, the guardian shall observe the provisions of article 13 of this law.

Work Permission for the Ward

**Article 63:**

The guardian may permit the ward to have an occupation, in that case the permission shall include the requirements. (this may mean “tools” of the trade, or could also mean restrictions).

Guardian’s Responsibility

**Article 64:**

(1). The guardian is considered the trustee of the ward in financial matters. If the guardian acts without negligence results in damages to the ward’s financial or legal interests or property, the guardian shall not be held responsible.

(2). If the guardian fails to perform what he is legally obligated, in that case, he will be responsible for any relevant financial and non-financial damages.

(3). In case there are several guardians and they all jointly cause damage to the ward’s property, they all shall have joint responsibility. If only some of them cause damage, in that case, only those [responsible] shall be accountable.

(4). The appointed guardian and the protector cannot engage in any transaction without permission from the court on behalf of the ward; however the natural guardian is excluded from this provision.



(5). If the guardian takes possession of the ward's property for his own interest, he/she shall be accountable to compensate the damage.

#### Complaint from the Guardian

##### **Article 65:**

Incompetent minors, imbeciles or any interested persons for the reasons of lack payment of life expenses and negligence in his providing nurturing, may request the court to remind the guardian of his/her legal obligations.

#### Donation to Person Placed under Guardianship

##### **Article 66:**

In case where assets are donated to a ward with a condition that the guardian may not utilize the assets, the guardian can only, by permission of the court, utilize the assets.

#### Guardian's Fee from Ward's Assets

##### **Article 67:**

The guardian's remuneration shall be paid from the ward's assets, if he/she is poor, [it shall be paid] from the natural guardian's assets, and if the natural guardian is poor, it shall be paid by the state.

#### Removal of Guardianship after Reaching Adulthood

##### **Article 68:**

(1). The guardian, executor [appointed guardian] and protector, are obligated to request the court for removal of guardianship of the minor after he/she has reached Sharia-specified puberty, and for the imbecile, insane and addicted persons, at the point of maturity, and if maturity is approved by the court, the guardian, executor and protector shall request the court to return their assets to them.

(2). After the removal of the guardianship, the ward may complain about the misuse of his/her assets; in this event, if proven, the guardian shall compensate the ward for the amount of damages.

## Fetus' Guardian

### **Article 69:**

- (1). The fetus's natural guardian is obligated to protect the property of the ward. In the absence of a natural guardian, upon request of the relatives and interested persons, the court shall appoint a protector to manage the fetus' property.
- (2). The fetus's mother has priority as the fetus's protector, before other relatives. Other relatives have the priority as a protector over unrelated people.
- (3). The guardianship of the fetus shall be terminated at the time of delivery.

## Legal Aid

### **Article 70:**

- (1). The court upon request of interested people, shall provide legal aid for the following people:
  1. A person who lacks two out of these three senses:
    - Hearing
    - Vision
    - Speech
  2. A person who, for any reason (advanced illness, etc) does not have the capacity to properly manage his/her property.
- (2). Remuneration of the legal counsel set forth in paragraph 1 of this article shall be paid from the property of the person who receives legal aid services.

## **PART II: FAMILY**

### **CHAPTER ONE: RELATIONSHIPS**

#### Types of Relationships

### **Article 71:**

Relationship based on its origin is of three types:

1. Blood relationship
2. Breast-feeding relationship
3. Relationship by marriage

#### Blood Relationship

### **Article 72:**

The blood relationship is:

1. Direct bloodline: a blood relationship which begins at birth; the father is the origin and the child is called (branch).
2. Indirect bloodline: a relationship between at least two persons who come from a joint origin (e.g., the relationship of two brothers).





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### Breast-feeding Relationship

#### **Article 73:**

Breast-feeding relationship is the relationship that occurs when a child is breast-fed by a woman other than the child's mother, or when at least two children are breast-fed by the same woman in observing the conditions set forth in this law.

### Relationship by Marriage

#### **Article 74:**

Relationship by marriage is the relationship of relatives of both parties as a result of the marriage contract of couples.

### Determination of Blood Relationship's Rank

#### **Article 75:**

Blood relationship's rank shall be determined as follows:

1. In a direct blood relationship from branch to origin, each generation is counted as one rank and the origin itself shall not be included in this determination.
2. In an indirect blood relationship from branch to joint origin and from joint origin to another branch, each generation is counted as one rank and the origin itself shall not be included in this determination.

### Determination of Breast-feeding Relationship Rank

#### **Article 76:**

The Breast-feeding relationship like blood relationship is both a direct and an indirect blood relationship, and its ranking is similar to that of blood relationship.

### Determination of Marriage Relationship Rank

#### **Article 77:**

In determining the marriage relationship rank, each couple's relatives' rank shall be determined and recognized as equal to the other.

## **CHAPTER TWO: MARRIAGE PROPOSAL AND ENGAGEMENT**

### Proposal

#### **Article 78:**

(1). A proposal is the offer of marriage to a woman by a man observing the following conditions:

1. The woman shall be free of any marriage obstructions and *edat* [waiting period].
2. The man and woman or the person who makes the offer of marriage on behalf of the man, or the person who accepts the offer on behalf of the woman, shall be competent.



3. The proposed woman shall not be someone else's fiancée, but if the man initiates, and a *Nekah* [marriage contract] takes place, the contract is valid.
- (2). It is prohibited to propose to a woman who is in *revocable edat* status. Proposal to a woman who is in the *irrevocable edat* status is allowed, but the proposal shall be or implicit.

### Engagement

#### **Article 79:**

Engagement or the promise of marriage is an allowable agreement between a man and a woman leading to an agreement for marriage.

### Commitment to Marriage

#### **Article 80:**

Commitment to marriage either conditionally during the marriage contract or within an independent contract, even if the penal clause has been specified, is not obligatory and the penal clause shall not be binding. In a case where either of the engagement parties (fiancé/fiancée) decline to marry, the other party cannot force him or her to marry or ask for compensation from the other.

### Fiancé and Fiancée's Meetings

#### **Article 81:**

Visitation and Sharia-permitted relations (speaking) to learn about each other's personal status, life and character as allowed by tradition, is permitted.

### Payments of Engagement Expenses

#### **Article 82:**

Whenever each of the parties without legal or legitimate reasons, after accepting the engagement contract, revokes the engagement contract, he/she is to pay the expenses for the wedding that has been incurred by the other party.

### Requesting the Gifts or Its Like

#### **Article 83:**

(1). Gifts, their like or the cost of the gifts, if an engagement contract is revoked, are redeemable as follows:

1. Consumable gifts on condition that they have not been consumed as of the revocation date.
2. Non-consumable gifts which are not wasted as of the revocation date of the engagement contract.

Non-consumable gifts that are traditionally preserved are redeemable if they were destroyed intentionally.



(2). In the event of either party's death, consumable gifts that have been consumed shall not be redeemable.

### Exchanging Photos

#### **Article 84:**

(1). Photos and letters which have been exchanged between parties are considered non-consumable, shall be returned, in its original form, upon demand of either party.

(2). Misuse of letters, photos and recorded sounds in order to blackmail or harm the other party is prohibited.



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## CHAPTER THREE: OBSTACLES TO *NEKAH* (MARRAIGE CONTRACT)

### Marriages Prohibited by Reason of Blood Relationship

#### **Article 85:**

Marriages of the following persons who are related by blood (paternal/maternal) are forever prohibited even if the relationship arose out of a mistaken sexual act or adultery:

1. Origins and branches [immediate blood relatives].
2. The origins and branches of parents (grandparents, brothers and sisters).
3. Paternal uncles, aunts and maternal uncles and aunts.
4. Parents' paternal and maternal uncles and aunts.

### Marriage Prohibited by Reason of Marital Relationships

#### **Article 86:**

Marriages of the following relatives (who are related to each other by both blood and breast-feeding relationships) are forever prohibited:

1. Wife's mother and grandparents of wife upon marriage.
2. Wife's daughters if there has been sexual penetration with wife.
3. The wife of father or of grandfather upon marriage.
4. The sons' wives upon marriage.

### Marriage Prohibited by Reason of Breast-feeding Relationship

#### **Article 87:**

Except as listed below, marriages of persons related through breast-feeding as stated in this law are prohibited to the same extent as marriages of persons related through blood relation. As follows:

1. His breast-fed son's sister.
2. The mother of his breast-fed brother or sister.
3. The grandparent of his breast-fed son or daughter or higher.
4. His breast-fed brother's sister.

### Pre-requisites of Breast-feeding Relationship

#### **Article 88:**

(1). The elements of a breast-feeding relationship are as follows:

1. Existence of breast-feeding mother
2. Existence of breast fed child
3. Breast-feeding

(2). During breast-feeding, the breast-feeding mother shall be one person and alive. If two women are breast-feeding the child for a total of less than fifteen times, the breast-feeding relationship will not be established with either woman.



(3). The breast-feeding child should be alive during breast-feeding and the age should be less than two years based on lunar calendar.

(4). The Breast-fed milk should be given under the following conditions:

1. For the duration of twenty-four hours or fifteen times completely and continuously, or in a quantity that is enough to help the bones of the child to become strong and the muscles to grow.
2. The [breast-feeding] milk shall be provided from a single source [single source here means the man who is married to the breast-feeding mother], if two children feed from two foster mothers [married to the same husband] they are considered foster -siblings.
3. The suckled milk should be produced as a result of a lawful pregnancy in a lawful marriage, or doubtful marriage, and/or legitimate insemination.
4. The milk shall be sucked directly from the breast.
5. The sucked milk shall be as a result of having given birth.

(5). Where there is knowledge of a breast-feeding relationship but it is unclear as to the numbers of the breast-feeding mothers, or the quantity of milk suckled, the prohibition does not apply.

#### Proof of breast-feeding

##### **Article 89:**

(1). The father of the child who is breast-fed [by another woman who is not the biological mother of that child] cannot marry the children of the woman who breast-feeds that man's child as well as the children of the husband of the breast-feeding mother.

(2). The breast-feeding relationship shall be proven as follows:

1. Confession to the breast-feeding relationship.
2. Dependable testimony of more than one *unfair[dishonest]* witnesses.
3. Testimony of two *fair* men or four *fair* women or one *fair* man and two *fair* women.

#### Combination of Two Sisters

##### **Article 90:**

(1). Combining two sisters in a marriage contract, both blood relationship and breast-feeding relationship is invalid. If the marriage contract of one pre-exists the other, or one of them is in the *edat* period of *rajyee[revocable divorce]*, it is invalid

(2). Marrying the nieces of a living wife without her permission is not enforceable.

#### Nullification of the Marriage Contract of the Fifth Wife

##### **Article 91:**

While observing justice in the obligatory rights, a man can establish marriage contracts of up to a maximum of four women at a time. Marrying a fifth wife, even if one of the previous wives is in *edat* period of a *rajyee* divorce is invalid.

A Married Woman or a Woman who is in (*edat*) Period

**Article 92:**

- (1). To knowingly marry a woman who is married, or a woman who is in the *edat* period (with full knowledge of the matter and the prohibition) shall be invalid with the exception of mistaken sexual penetration, and shall cause permanent prohibition between parties.
- (2). To unknowingly marry a married woman or a woman who is in the *edat* period, (while unaware of the fact or the provision) shall be invalid, and in case of sexual penetration shall cause permanent prohibition between parties.

### Prohibition of [Nekah while wearing] *Ehraam* [or the Hajj garb]

#### **Article 93:**

(1). Knowingly entering into a marriage contract by a couple or any one of them individually, during the *Ehraam* period shall be invalid, and will cause permanent prohibition to the parties.

(2). To unknowingly enter into a marriage contract by a couple or any one of them individually during the *Ehraam* period (while unaware of the fact or the provision) shall be invalid and in case of sexual penetration with the wife, will cause permanent prohibition to the parties.

(3). If proved that the *Ehraam* was invalid, then the marriage contract shall be considered valid.

### Lea'an [when husband accuses his wife of adultery or when he denies affiliation with a child] and *Qazaf* (false accusation of sexual intercourse by others)

#### **Article 94:**

Dissolution of marriage contract due to *lea'an* in accordance with the prescribed provisions of this law shall cause permanent prohibition between couples.

### Adultery and Mistaken Sexual penetration

#### **Article 95:**

(1). The act of adultery: is completed sexual penetration with another by a sane adult, not under duress or force, and having the knowledge that there is no marital relationship between the parties.

(2). Mistaken sexual intercourse is completed sexual intercourse by a sane adult, not under duress and force, with a woman not his own wife where sex is unintended due to an inability to distinguish that the other is not his spouse

(3). Marriage is eternally prohibited where a man commits adultery with a married woman during her revocable divorce waiting period. However, marriage is not eternally prohibited where a man has mistaken sexual intercourse with a woman, or has sexual penetration with a woman during her irrevocable divorce waiting period, or during *edat* of death [four months and 10 days], or *edat* of dissolution [three menstruation periods] .

(4). Marriage between an adulterer's father and the adulteress or her ascendants or descendants is not appropriate, however if a paternal or maternal aunt was the adulteress, in this case, marriage with the aunt's daughters is forbidden.

(5). The marriage of a couple that has taken place before the act of adultery [by any of the above mentioned family members with one person from the couple] is not affected or dissolved [as a result of adultery that has taken place after the marriage contract].

### Three Divorces and Nine Divorces



### **Article 96:**

(1). When a man [verbally] divorces his wife in three instances, but he returns to her twice, he shall be prohibited from marrying the same wife unless the woman has married another man and, after sexual penetration, she is divorced or her subsequent husband dies.

(2). Wife will be prohibited permanently from marriage after nine divorces with the same husband, provided, six of them are revocable divorces.

### Infidelity

### **Article 97:**

The marriage contract of a Muslim man with a woman who is not a follower of a holy book [the four books recognized as holy in Islam are Quran, Bible, Toara, Zaboor] is invalid. The marriage contract of a Muslim woman with a non-Muslim man is invalid. If a non-Muslim husband and his non-Muslim wife convert to Islam at the same time, their original marriage is valid and shall continue.

### Sodomy

### **Article 98:**

Sodomy before marriage may prohibit the sodomizer's subsequent marriage to the following persons (despite the fact either party is insane, a child, an adult or different):

1. Mother of the person who is sodomized and all her ascendants (either through blood relationship or through breast feeding)
2. Daughter of the person who is sodomized and all her descendants (either through blood relationship or through breast feeding)
3. Sister of the person who is sodomized (through blood relationship or breast feeding)

## **CHAPTER FOUR: CONDITIONS FOR VALIDITY OF MARRIAGE CONTRACT**

### Validity of Wards' Marriage

### **Article 99:**

(1). The marriage of an underage (male/female), insane (male/female) is permissible through a natural guardian, who is not *Mufsada* [devious], authorized guardian or a court.

(2). Minor (male/female) after reaching puberty, and insane (male/female) after again becoming sane, can reject a marriage that has been arranged by a natural or authorized guardian who does not act in the best interests of the ward.

### Intercourse with Wife

**Article: 100:** Intercourse with the wife before [she has reached] puberty is prohibited. If virginity is lost due to sexual penetration, the person who has conducted the intercourse shall be responsible to pay the full *dia* [blood money or compensation to victim] and the woman's maintenance for the rest of her life, even if she is divorced.

Efza of a Minor Girl

**Article 101:**

If a man causes *Efza* (the mixture of urination and menstrual discharge “channels” or menstrual discharge and/or excremental channels, or all three of them) of a minor girl through adultery, the person causing Efza shall pay the equivalent of compensation to an adult woman. This provision does not apply to an adult woman’s loss of virginity either through legal marriage or adultery.

## Validation of a Virgin Girl's Marriage Contract

### **Article 102:**

(1). The enforcement of a virgin girl's marriage is subject to her own consent and the permission of her natural guardian.

(2). If the following circumstances are proven by the virgin girl before the court, the natural guardian's permission shall be revoked:

1. If getting permission of the natural guardian is impossible and the girl is in need of marriage.
2. If the natural guardian is an imbecile.
3. If the natural guardian is a non-Muslim.
4. If the natural guardian prevents the girl from marrying a person of interest, who is not of the equal status, and there isn't any other person available for marriage of her equal status.

(3). Tribe, nationality and race are not considered to have difference status, so long as the person is Muslim.

## Marriage of an Insane Person

### **Article 103:**

The natural guardian has no authority over the marriage of a periodically insane person and his/her marriage contract is valid during his/her sanity. A permanent insane person after becoming sane cannot revoke a marriage contract arranged by his/her natural guardian. Where a permanently insane person has no natural guardians, and when an urgent need is established, the court shall intervene concerning the marriage.

## Marriage of an Imbecile

### **Article 104:**

An imbecile is allowed to independently manage his/her marriage, however his/her financial affairs are managed by a guardian. If a guardian fails to perform his/her duties, the court shall intervene and require the guardian to perform those duties.

## Intention and Consent of Parties

### **Articles 105:**

(1). Intention and consent of the parties are prerequisite to the marriage contract and it is required to be obtained explicitly by words, action or writing.

(2). Whenever a contract of marriage is carried out without the consent of the parties, or a party, it can be subsequently validated by later consent.

(3). The contract of marriage shall be implemented by verbal offer of a party and verbal acceptance of the other party with the explicit intention to marry [that person].

## Wording of Marriage Contract

### **Article 106:**

Offer and acceptance in a marriage contract shall take place as below:

1. With the couple's intention to write marriage vows, and create the marriage.
2. Each offer and acceptance has equal priority.
3. The customary sequence shall be respected between offer and acceptance.
4. If possible, the words of marriage performance shall be recited in Arabic.
5. Offer and acceptance which are cited in Arabic shall be in the past tense.
6. The words of offer from a male party or the husband and the acceptance using the word *Qabelto* (accepted) or *Razaito* (agreed) shall be valid.

### Agency (representation) in the Marriage Contract

#### **Article 107:**

- (1). Each of the marriage parties shall appoint an agent to represent him/her in arranging and facilitating execution of the marriage contract with either a specified person or an unspecified person.
- (2). A marriage contract agent shall be mature, sane, willing, competent and Muslim.
- (3). If a person assigns an absolute agent for the execution of a marriage contract, the agent cannot marry the person/client.
- (4). Where the agent breaches the specific conditions made by the client concerning a third person, or the *Mahr* [Mandatory gift or dowry from groom to bride], or other conditions, or the agent does not otherwise act in the best interests of the client, the marriage contract shall be deemed to be inoperative.
- (5). A marriage agent, without permission from his/her client cannot select another person as his/her client's agent.
- (6). Where the marriage contract is initiated between an authorized agent, and an unauthorized agent, the contract will not be effective unless and until the client of the unauthorized agent agrees to the contract terms.
- (7). Where delay in acceptance or rejection of the terms of the contract results in losses to the client of the authorized agent, the client of the authorized agent shall have the right to revoke the terms of the contract.

### Dispute over Gender

#### **Article 108:**

- (1). The essential condition of a marriage contract is that the parties shall be of opposite gender at the inception and throughout the duration of the marriage.
- (2). Where the gender of a party is not recognized according to Sharia, or is not capable of determination, the marriage contract shall be invalid.

### Determination of the Marriage Contract Parties

**Article 109:**

- (1). Specifying both parties of the contract that is not doubtful to the identification of the parties, is a condition of a valid marriage contract.
- (2). If there is any doubt in identifying either party to the marriage contract, the contract shall be deemed invalid.
- (3). Where a person with the qualities and title of another person (not him/herself) is a contracting party to a marriage contract, and the other contracting party relies on the description of these qualities and title in agreeing to the marriage contract, the marriage contract shall be deemed invalid.

Definite and Indefinite Terms in the Marriage Contract

**Article 110:**

Where the validity of the marriage contract depends upon the occurrence of an indefinite condition or event, the contract shall be deemed invalid. Where the validity of the contract depends upon the occurrence of a definite event, such as the marriage is to be performed on a Friday, or the contract is to be between paternal cousins, the contract is valid.

**CHAPTER FIVE: EFFECTS OF MARRIAGE CONTRACT**

Definition and Types of *Mahr* [gift offered by the groom to the bride]

**Article 111:**

- (1). *Mahr* (dowry) is what the man marrying a woman pays to the woman or promises to perform for the woman. A promise to make a payment to a woman's father or to a third person is unenforceable.
- (2). There are four types of *Mahr*:
  1. *Mahr-e-Mosama* or specified dowry is the sum that is determined by the couple's mutual consent.
  2. *Mahr-e-Mesel* or dowry of women of her status is the sum determined on the basis of the woman's family's status in the community, local customs and other criteria.
  3. *Mahr-e-Mota'a* or dowry is the sum to be determined by the man's financial ability.
  4. *Mahr-e-Sunna* or dowry according to Islamic tradition is 500 silver Dirham where one Dirham equals in size 18 peas.

The payment of *Mahr-e-Mesel*, *Mahr-e-Mota'a* and *Mahr-e-Sunna* shall be determined in accordance with the provisions of this law.

- (3). *Mahr* may be determined in two ways (partially as cash and partially as credit) A promise to pay *Mahr* based on an indefinite condition that could potentially fail to occur shall be deemed invalid.



## Conditions of the *Mahr*

### **Article 112:**

- (1). The objects that can be considered as *Mahr* shall have the following conditions:
  1. It shall have economic value and may include substances, benefits, operations and financial rights and obligations, or waiver of such rights and obligations, such as a waiver of a commitment to build a multi-story commercial building.
  2. It shall be capable of being possessed. Alcohol and pork products may never be deemed acceptable as content of the *Mahr*. Where the above-mentioned products are determined as *Mahr*, and after sexual penetration takes place, *Mahr-e-Mesel* shall be selected.
  3. It shall be known, unless the parties have agreed that its content is to be determined by one of the couple or a third person; or if it is present, in which case seeing it is sufficient, and its weight, quantity or price is not necessary.
  4. It shall be capable of both being given and received [to/by another person].
- (2). Where *Mahr* does not meet the conditions specified in paragraph (1) of this article, in case of divorce after sexual penetration the wife shall be entitled to *Mahr-e-Mesel*.
- (3). Where the property described in the marriage contract is not owned by the husband, and the owner of the property declines to surrender that property, the wife shall be entitled to *Mahr* that is of equivalent value to the property described.
- (4). Where *Mahr* is a specific item and it is destroyed before execution of the marriage contract or before delivery, the wife is entitled to demand the equivalent or the value of the item. Where the content of *Mahr* has been damaged, the wife shall be entitled to receive the damaged item and indemnification for the difference between the value of the damaged item and its undamaged value.

## Ownership of *Mahr*

### **Article 113:**

- (1). The wife shall demand the full *Mahr* immediately after *Nekah* (solemnization of marriage), unless agreed by both parties to be provided in installments.
- (2). The wife can refuse to submit to her husband [sexual desire] until the full *Mahr* is paid by the husband, even if the husband is poor, unless otherwise specified in the marriage contract. Sexual penetration before [wife reaches] puberty cannot prevent the wife from demanding the *Mahr*.
- (3). If the *Mahr* is *Moajal* (to be conferred at a later time) and the wife willingly refuses to submit to her husband's sexual desire until the payment time has arrived, the wife's refusal shall not be valid.

## Determination of *Mahr* During Solemnization of Marriage Contract

### **Article 114:**

(1). After the *Mahr* has been specified in the marriage contract, and the woman submits to the husband, the husband is obligated to pay the specified *Mahr*. Where the wife is divorced prior to sexual penetration, she shall be entitled to half of the specified *Mahr*.

(2). Where the wife has received the full sum of *Mahr* and has spent or destroyed it, and the wife is divorced before sexual penetration, the husband may demand return of half of the value of *Mahr*; where the value of the *Mahr* at the time of divorce is different from the value at the time it was paid, the amount to be paid to the husband shall be based on the lower of the two values.

(3). Where the *Mahr* consists of income-producing property, and the wife is divorced prior to sexual penetration, the wife shall be entitled to all of the income attributable to the property; except where *Mahr* is a pregnant animal or a fruit tree, in which case half of the separate income shall belong to the husband. Where the wife has damaged the property, the husband may demand half of the property as well as half of the *Arsh* [term referring to the amount of damages to be assessed in such cases as specified by law) to be returned.

#### Circumstances of the Increase and Decrease of *Mahr*

##### **Article 115:**

Where the value of *Mahr* increases due to the contribution of the wife between the time it was received and divorce of the wife prior to sexual penetration, such increase shall belong to the wife; but where the value increases or decreases as a result of market rates, that increase or decrease shall belong to the husband.

#### Husband's Discharging from the Obligation of *Mahr*

##### **Article 116:**

In a divorce action where, prior to sexual penetration, the wife has waived the husband's *Mahr* obligation, or has donated the *Mahr* to him, the wife shall nonetheless be entitled to half of the dower.

#### Circumstances of Entitlement to *Mahr*

##### **Article 117:**

(1). Where the marriage contract is revoked under any condition after sexual penetration, the wife shall be entitled to the entire *Mahr*.

(2). Where the marriage contract is revoked under any condition before sexual penetration, the wife shall not be entitled to her *Mahr*, unless this revocation occurs due to the husband's apostasy or impotency, in which case the wife shall be entitled to half of the specified *Mahr*.

(3). Where, following sexual penetration, the marriage contract is revoked due to a discovery of a defect about which the wife deceived the husband, the wife shall not be entitled to *Mahr*. If, however, it is determined that the husband was deceived by a third person, rather than the wife the wife shall be entitled to *Mahr* and the third person shall be liable to the husband for damages.





(4). In the event of the death of either party before sexual penetration, the wife shall be entitled to half of the specified *Mahr*; however, if *Mahr* is not mentioned in the marriage contract, the wife is not entitled to receive dower.

(5). If the marriage contract was entered into during the husband's disease and if before sexual penetration, either party dies, the wife shall not be entitled to receive anything.

(6). In case of invalidation of the marriage contract due to discovery of an obstacle to the marriage contract, prior to sexual penetration, the wife shall not be entitled to dower. However, in case of sexual penetration the wife shall be entitled to *Mahr-e-Mesel* [similar *Mahr* of other women of her status]. Where the wife was aware of the invalidation of the marriage contract prior to sexual penetration, she is not entitled to receive anything.

#### Non-determination of the *Mahr* in the Marriage Contract

##### **Article 118:**

(1). A marriage contract is valid even if *Mahr* is not determined, and the couple may determine the terms of that [*Mahr*] before sexual penetration, and after sexual penetration the wife is entitled to *Mahr-e-Mesl* [similar *Mahr* of other women of her status].

(2). Where in the time period between execution of the marriage contract and sexual penetration, the value of the *Mahr* changes, the standard for the *Mahr-e-Mesel* shall be the value at the time of sexual penetration.

(3). Where *Mahr* has not been determined, the wife may refuse to submit to her husband's sexual desire until the amount of *Mahr* has been determined and received.

(4). Whenever the marriage contract before sexual penetration is revoked due to divorce, apostasy or impotency of the husband, in case of indetermination of *Mahr*, the wife is entitled to *Mahr-e-Mota'* [the least amount or an object of lower value such as a pair of shoes, clothes...]. But if the revocation of the marriage contract occurs due to the death of either party, apostasy or defects of the wife, and if the *Mahr* is not determined before and after the marriage contract, or before sexual penetration, the wife shall not be entitled to anything.

(5). Where *Mahr* has not been determined and the marriage contract is revoked prior to sexual penetration due to obstacles to the sexual penetration, the wife shall be entitled to nothing. But where the revocation occurs following sexual penetration, she shall be entitled to *Mahr-e-Mesel* [similar *Mahr* of other women of her status], provided it is not more than 500 Dirham (*Mahr-e-Sunna* or as specified in Islamic tradition). But where the wife was aware of the invalidation [of the marriage contract], she shall be entitled to nothing.

#### Non-Determination of the Specified *Mahr* in the Marriage Contract

##### **Article 119:**

A provision in a marriage contract that prohibits the determination of the discussion of the payment of *Mahr* shall invalidate the contract. However, a provision that the parties agree not to specify the terms of *Mahr* is permissible; in that case, the *Mahr* shall be treated as undetermined. But in case where there is a provision in the contract that does not specify the



payment of *Mahr-e-Mesel*, and sexual penetration occurs, both the condition and the contract are void.

### Delegating Determination of *Mahr*

#### **Article 120:**

(1). If the authority to determine the *Mahr* is delegated to the husband or a third party, the husband or the third party may determine the amount of *Mahr*. If the authority to determine the *Mahr* is delegated to the wife, she cannot determine the *Mahr* if it is more than *Mahr-e-Sunnah* (as determined in Islamic tradition, 500 Dirham] without her husband's consent.

(2). When the authority to determine the *Mahr* is delegated to the husband or the wife, and the die before the determination of *Mahr* and before sexual penetration, the wife shall be entitled to *Mahr Mota'* [the least amount or an object of lower value such as a pair of shoes, clothes...]. But if the authority to determine the dower is delegated to an arbitrator and that arbitrator dies before determination of the amount of *Mahr* and before sexual penetration takes place, a new arbitrator shall be appointed and/or the couple shall determine the *Mahr* by agreement. But if the arbitrator dies after sexual penetration, the wife shall be entitled to *Mahr-e-Mesel* [similar *Mahr* of other women of her status].

(3). If the person to whom the responsibility [of determining the amount of *Mahr*] has been delegated refuses to determine the amount, the court shall require him/her to determine the amount and or assign a new arbitrator, or the couple may agree to determine the amount of dower themselves.

### Disagreement Regarding *Mahr*

#### **Article 121:**

(1). When the husband claims that he has provided *Mahr* and the wife, instead, claims that it is a gift, the following should apply:

1. The verdict shall be in favor of the party who has reasons and evidence.
2. When both parties bring reasons and evidence to prove their claims, the wife's reasons and evidence have priority.
3. If both parties fail to provide evidence, the verdict shall be in favor of the husband.

(2). When the amount of *Mahr* has not been specified in the marriage contract, and the wife has taken something of value from the husband before sexual penetration, that item shall be considered as her *Mahr*.

(3). In case the wife dies or a divorce takes place and the *Mahr* was agreed to be paid in some time in the future, the *Mahr* shall not be due until that future date. But when the husband dies, *Mahr-e-Moajjal* [to be conferred at a later time] will immediately become *Mahr-e-Muajjal* [to be paid immediately].

(4). When the *Mahr* is gold or money, the wife can demand that, if and the parties disagree about the amount due, the parties or their heirs should negotiate the result among themselves.

### A Minor Wife's *Mahr*

#### **Article 122:**

(1). When a marriage contract of a male minor is executed by the minor's father or paternal grandfather, the male minor shall be responsible for the *Mahr*, unless the minor has no financial resources. In that case, the minor's natural guardians shall be responsible for the *Mahr*. Upon the death of the natural guardian who was responsible for the *Mahr*, the *Mahr* shall be paid from the natural guardian's estate.

(2). When the husband's father pays the *Mahr* and his son becomes mature and he divorces his wife before sexual penetration, the husband shall demand half of the paid *Mahr*.

### The Payment of the Marriage Dower by an Agent

#### **Article 123:**

When a person claims to be representing a man, and facilitates his marriage, but the man dies after the marriage contract takes place, in the case the heir [of the deceased man] denies that person's claim [being the deceased man's representative], and there is no evidence, the representative is obligated to pay the wife's [widow] *Mahr* according to the provisions of this law.

### Differences in Determination and Receipt of the Marriage Dower

#### **Article 124:**

(1). When the couple has differences about determining a specific *Mahr*, the person claiming the specific *Mahr* shall be required to prove his/her claim; otherwise, the words of the other party shall be accepted on oath. In the case of differences regarding the receipt of the *Mahr*, the person claiming that the *Mahr* was received shall be required to prove it; otherwise the words of the person denying receipt shall be accepted on oath.

(2). When the husband claims the discharge of the obligation, or payment of the *Mahr*, and the wife denies having received payment, or the wife claims more and the husband claims less, the person alleging discharge of the obligation or payment of the *Mahr* or a higher value shall be required to prove that claim; otherwise the words of the other party shall be accepted on oath.

## Disagreement over Sexual Penetration

### **Article 125:**

In case of disagreement over sexual penetration or non-penetration, the party who claims sexual penetration is required to bring evidence. Otherwise, the claim of the party who denies sexual penetration shall be accepted under oath. If divorce has taken place after the parties have spent time alone and the wife claims sexual penetration while the husband denies sexual penetration, the words of the denier concerning sexual penetration shall have priority by oath.

## Disagreement Regarding *Mahr-e- Maujal* [to be paid immediately]

### **Article 126:**

In case of disagreement regarding whether the *Mahr* is to be paid immediately or in the future, the party claiming future *Mahr* payment shall be required to present proof; otherwise, the words of the party claiming immediate payment shall be accepted on oath.

## Enumeration of other Assets instead of the Determined *Mahr*

### **Article 127:**

When the *Mahr* has been specified, but another item is mentioned as *Mahr*, and the first *Mahr* is not intended, the *Mahr* agreement shall be deemed nullified. However, where it can be shown that the parties' intention was that the first item specified was always intended to be the marriage *Mahr*, then that first item shall be recognized as *Mahr*.

## Requirements for Determining *Mahr-e-Mesel* [dowry of women of her status]

### **Article 128:**

In the following cases similar *Mahr* (*Mahr-e-Mesel*) proportion shall be required upon the person:

1. In case a male causes a girl to lose her virginity by any tool or instrument
2. If adultery is committed with a female of unsound mind or a minor
3. In case adultery is committed with a woman who does not have knowledge about the illegality of adultery.

## Methods of Payment of *Mahr*

### **Article 129:**

(1). When *Mahr* is to be paid in domestic or foreign currency, the amount of *Mahr* to be paid at the time of payment shall be calculated to be equivalent to the value of the amount specified at the time of execution of the contract; otherwise, the parties shall resolve the difference taking into consideration differences in currency rates.

(2). When *Mahr* is to be paid in the future *Mahr-e-Moajal* [to be conferred at a later time], it shall be calculated at the time of payment to be equivalent to the value of the *Mahr* specified at the time of execution; otherwise, the parties shall resolve the differences.

## Maintenance



**Article 130:**

In accordance with the provisions of this law, the wife's maintenance shall be undertaken by the husband.



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## Dowry

### **Article 131:**

- (1). Dowry: Household goods, clothes or things brought to the [marriage] house by the wife from her, own assets or her father's.
- (2). The husband is not entitled to ownership or use of the wife's dowry, except if the wife consents to the husband's use or control of the content of the dowry, or if local custom otherwise allows.
- (3). When the husband or his creditors claim that specific property belongs to the husband, and the wife claims that the specific property is from her own dowry, the party not in possession of the property shall be required to present proof of ownership. But if both parties are possessors or neither party is a possessor of the property, the parties shall be required to present evidence of ownership.
- (4). When one of the couple claims the damage to, or loss of the dowry by the other party, and the other party denies responsibility for that loss, the claimant shall be required to prove the allegation; otherwise, the oath of the person denying fault shall be the basis for the verdict.
- (5). If, prior to the marriage, the husband buys materials that he takes to the wife's house with the understanding that she will bring these materials to the marriage house, these materials shall be deemed to be part of the husband's property, unless the wife proves that these materials became her property.

## Joint Obligations of the Couple

### **Article 132:**

- (1). The couple shall be obliged to get along with each other, their parents and their relatives.
- (2). The couple shall be obliged to assist and cooperate with each other in maintaining a stable family, and in raising their children.
- (3). Couples shall avoid performing acts that may cause animosity against each other. If a man demands his wife to apply makeup on behalf of the man, she is obliged to do so.
- (4). The husband is bound to spend at least one out of four nights with his wife when he is not traveling. This shall not apply if any of the parties have a sexually transmitted disease, or if this shall cause harm to either party. It is the duty of the wife to defer to her husband's inclination for sexual enjoyment. The man is expected not to postpone sexual intercourse with his wife for more than four months.
- (5). When a man has more than one wife, he shall be obliged to allocate at least one night out of every four nights for each wife in accordance with subparagraph 4 of this article. The wife's right [to spend the night with her husband], if agreed, is transferable to the husband or other wives.
- (6). The marriage couple can extend the number of nights shared with any wife provided that the arrangement does not impose harm or hardship on his other wives.

(7). The wife is obligated to maintain the marriage home and to do household chores only if specified by the husband as a condition in the marriage contract; otherwise household chores is not obligated to the wife.

## Couples' Mutual Rights

### **Article 133:**

- (1). The household's supervision is the right of the husband, unless based on the husband's mental deficiency, and by order of the court, it [supervision] is given to the wife.
- (2). If a wife has employment before marriage and continuation of the job is conditioned at the time of the marriage contract, in this situation the husband cannot oppose the wife's employment after marriage, unless such employment is against the interest of the family or of one of the spouses.
- (3). A husband can prevent his wife from any unnecessary action or actions, which are not according to her duties as specified by Sharia Law and are contrary to the local customs and the husband's benefits.
- (4). A wife cannot leave the house without her husband's permission unless she has urgent cause, or is in extreme difficulty, in this event, she may leave the house. In case of dispute the issue shall be resolved by a court.
- (5). A wife is the owner of her own assets and can possess it in any form without her husband's permission.

## Conditions of Addendum to the Marriage Contract

### **Article 134:**

- (1). Conditions within an addendum to a marriage contract are subordinate to conditions contained within the original contract. If the original contract is valid, it [addendum] is also valid, if it [original contract] is invalid it [addendum], shall also be invalid. There are three types of it [addendum conditions]:
  1. Characteristic conditions: This type of condition relates to quality or quantity of the agreement's object. [this may refer to *Mahr*]
  2. Future event condition: This type of condition is related to occurrence of an issue outside or beyond the contract.
  3. Condition about Performance of an Act: This type is the condition of performing or non-performing of an act on one of the parties or a third person.
- (2). When a condition of an addendum is not possible, or if it violates the law or Sharia, the condition shall be void with the marriage contract remaining valid, unless such condition removes the *Mahr* in which case the marriage [contract] shall be void.
- (3). A condition in conflict with the requirements set forth in a marriage contract is invalid and will invalidate the contract. A condition conflicts with the requirements of a marriage contract when it voids those things essential/belonging to, or are the consequences of, the marriage, or it changes from a positive condition to one that voids those things essential/belonging to, or are the consequence of, the marriage. For example, the absence of absolute marital relations.

(4). The wife may set the following conditions in a marriage contract that must be met by the husband:

1. Husband shall not enter into another marriage contract, whether permanent or temporary, with another woman.
2. Wife may choose the shelter [home, place to live]
3. Wife has the right to unconditional divorce or divorce based on the following circumstances:
  - Non-payment of maintenance that results in hardship for the wife.
  - Imprisonment of the husband for a long period.
  - Husband is afflicted with an incurable disease.
  - Husband is absent, for example - absent for more than two or three years.

(5). Conditions affecting the dissolution of a marriage are invalid if they are not included within this law.

(6). When the addendum includes specified performance [or specified non-performance] by a third party and the third party agrees, the third party shall be liable for losses associated with failure to carry out the agreed performance [or non-performance].

### Disputes Arising from the Marriage Contract

#### **Article 135:**

(1). When a dispute occurs between the *zaowjain* [husband and wife] regarding a condition within or other related agreements associated with the marriage contract, the complainant shall provide proof; otherwise, the respondent [the one who denies the complaint] will give a sworn statement [oath] and that will be the basis of the verdict.

(2). When a person claims they are married to a person who denies it, the claimant shall prove the claim; otherwise, the respondent [the one who denies the claim] will give a sworn statement [oath] and that will be the basis of the verdict. In case the respondent [the one who denies the claim of marriage], after the issuance of the verdict in his/her favor, admits the marriage exists and has a proper reason for the prior denial, a verdict shall be issued to affirm the marriage.

(3). When a woman states that she has no husband, a man may assume her statement is true without investigation, and he may marry her; however, if after the marriage the wife states she is married to someone else, or another man claims he is married to her, and this is proved true, the marriage contract shall be invalid and considered as *wati ba shobha* [sexual intercourse in doubt]. If there was sexual penetration and the woman has no knowledge about the invalidity of the marriage contract, she shall be entitled to a *Mahr-e-Mesel* [dowry of women of her status].

## **CHAPTER SIX: TEMPORARY MARRIAGE**

### Conditions of Temporary Marriage

#### **Article 136:**



- (1). *Nekah-e-Mata'* is a marriage contract in which a man considering the conditions set forth in this law, marries a woman on a non-permanent basis.
- (2). The requirements of temporary marriage includes competency, valid conditions [of contract], addendums, and conditions relating to family relationship [non-blood related], it also includes obstacles in the validity of a permanent marriage contract.
- (3). Lack of determination of *Mahr* in temporary marriage contract voids the contract.
- (4). If the temporary marriage contract does not specify a term limit, it [temporary marriage contract] shall be changed to a permanent marriage contract.
- (5). The duration of a temporary marriage shall begin upon execution of the contract unless the parties agree to a different start date.

### Evidences of the Temporary Marriage

#### **Article 137:**

- (1). The *zaowjain* [husband and wife] in a temporary marriage shall not be entitled to inheritance from each other and the husband shall not be required to pay maintenance to the wife unless it is a condition within the marriage contract. When the temporary marriage lasts an extended period and the marriage becomes permanent, an addendum requiring maintenance shall be implicit.
- (2). A child from a temporary marriage shall have the same rights as a child of a permanent marriage.
- (3). The husband [in the temporary marriage] is not obligated to have sexual intercourse or sexual relations with the wife, but the wife is obligated to *tamkeen* [submit to sexual desire of her husband]. If the wife refuses *tamkeen* for a period of time without a Sharia-based justification, in this case there shall be a reduction of the *Mahr*.
- (4). The wife may condition *tamkeen* to payment of the *Mahr*, unless the dower is *mahre-moujal* [to be conferred at a later time]; and the husband may also condition payment of *Mahr* to sexual penetration.
- (5). When one of the couple dies or the period of the temporary marriage expires before the wife gets ready for *tamkeen*, the husband must pay the *Mahr*.
- (6). When it is clear that the temporary marriage contract is invalid and before sexual penetration, nothing shall be given to the wife; if, after sexual penetration, or if the wife had no knowledge of the non-truthfulness [within the marriage contract] the husband must pay *Mahr-e-Mesel* [dowry of women of her status; but if wife had knowledge of the non-truthfulness, she shall be entitled to nothing from the *Mahr*.
- (7). When the husband spends a certain time period with the wife before sexual penetration, he shall pay half of the *Mahr* to her; but if he spends a certain period of time with the wife after sexual penetration, he shall be obliged to pay the full sum of the *Mahr*.

(8). The temporary marriage contract is not subject to divorce, *ilah* [swearing to abstain from sexual relations with the wife for four months], *lea'an* [baseless accusation of adultery] or *muhalet* [wife marrying and divorcing another man in order to re-marry original husband]; multiple temporary marriage contracts and dissolutions with the same wife shall not be prohibited.

#### Dissolution of the Temporary Marriage Contract

##### **Article 138:**

(1). A temporary marriage shall be dissolved only by expiration of the agreed period, by choice of the husband, or by the death of one of the couple.

(2). If continuing a temporary marriage could cause harm or hardship to the wife, she may request the court to *aerzah* [reach an amicable agreement] require the husband to prematurely end the contract.

(3). The husband may enter into a permanent or temporary marriage contract with a woman who is in *edat*, or he may choose to change a temporary marriage to a permanent marriage contract; however he cannot extend an existing temporary marriage contract until the duration of it expires.

#### Edat in Temporary Marriage Contract

##### **Article 139:**

(1). A wife does not have *edat* if the marriage contract has expired, a period of time has been spent with the wife by the husband, or the contract has been dissolved before sexual penetration. However, after sexual penetration, if the wife menstruates [after sexual penetration], her *edat* is equal to two times menstruation [two months], but if she has not menstruated [after sexual penetration] and she is not menopausal, her *edat* will be 45 days. *Edat* of a pregnant woman shall be until she gives birth to the child; *edat* of a wife, whose husband dies, shall be four months and ten days.

(2). If the temporary marriage contract is discovered to be invalid, the wife's *edat* shall be three periods of *tohor* [time in between two menstruation periods].

(3). If the husband dies before the expiration of the period [of the temporary marriage contract], the wife shall complete the *edat* [for death], but if the wife is pregnant, she shall complete the long *edat* [until delivery of the child].

(4). If it is unclear whether the husband dies before or after the expiration period [expiration date of the temporary marriage], the wife shall complete the *edat* [for death].

## **CHAPTER SEVEN: DISSOLUTION OF THE MARRIAGE CONTRACT**

### Circumstances for the Dissolution of the Marriage Contract

#### **Article 140:**



The marriage contract shall be dissolved by revocation, termination, divorce or death of one of the spouses in accordance with the provisions of this law.

#### Revocation

##### **Article 141:**

(1). Revocation occurs when one of the couple uses his/her right, if entitled, to dissolve the marriage contract within the provisions of this law, without other procedures and required conditions of divorce.

(2). Reasons of the revocation of the marriage contract shall be as follow:

1. Defect
2. Breach of a condition [of the marriage contract]
3. Fraud

#### Revocation due to the Man's Defects

##### **Article 142:**

(1). The existence of the following defects in the husband, either before or after concluding the marriage contract, shall result in the wife having the right to revoke [the marriage contract]:

1. Impotency: Lack of husband's penis erection making sexual intercourse impossible. However, this does not apply if the husband had, at least once, sexual intercourse with the wife or other than her [wife].
2. *Jub*: The husband's penis has been severed to a length that sexual penetration is not possible. However, if the husband's penis was severed after concluding the marriage contract or after sexual penetration, or sexual penetration is still possible, the wife shall not have the right of revocation.
3. Castration: non-existence of testicles at birth, removal or their destruction [from injury]; conditioned that the wife did not have any information about this at the time of [executing] the marriage contract.
4. Insanity: This includes both permanent and periodical insanity before and after concluding the marriage contract, and/or after sexual penetration in either permanent or temporary marriage.

(2). When impotency of the husband is proved, he is required to cure himself within one year; in case he cannot cure himself, the wife may use the right of revocation. However, if within the one year period, the husband has sexual intercourse with his wife or any other woman, or the wife is content to continue with the marriage contract, the wife does not have the right of revocation.

#### Revocation due to the Wife's Defects

##### **Article 143:**

(1). The existence of the following defects of the wife before [execution of] the marriage contract shall result in the revocation right for the husband, provided he has no knowledge about them before [execution of] the marriage contract.

1. Protrusion of the womb: Existence of flesh or bone in the wife's vulva even if it is not an obstacle for sexual penetration or pregnancy.
2. *Efza*: The mixture of urination and menstrual discharge canals or menstrual discharge and excremental canals or three of them.
3. Lameness [walking/mobility handicap]
4. Blindness in both eyes
5. Insanity
6. Leucoderma [white patches on skin]
7. Leprosy

(2). When the defects referenced in paragraph one of this article occur after the [execution of] the marriage contract, the husband does not have the right of revocation.

#### Duration of the Right of Revocation

##### **Article 144:**

(1). Right of revocation is considered urgent. Upon knowledge of conditions for revocation, one of the sides of the marriage contract does not revoke the marriage contract or sexual penetration occurs or *Tamkeen* [wife submits to husband's sexual desire] takes place evidencing [marital] satisfaction, the right to revocation is void, unless they are unaware of the urgency of the revocation [process].

(2). If the revocation occurs, initiated by either party, prior to sexual penetration, the wife is not entitled to any *Mahr*, however if the marriage contract is revoked as a result of impotency, half of *Mahr-e-Mesel* is applied. If revocation of the marriage contract occurs after sexual penetration, *Mahr-r-Mosama* (specified *Mahr*) shall be required.

(3). The right of revocation shall be void if one of the members of a couple, before the [execution of] marriage contract had knowledge about reasons for revocation.

(4). Defects, as grounds for revocation, shall be proven by confession, testimony on confession, or medical examination.

#### Violation of a Condition [of the marriage contract]

##### **Article 145:**

(1). Whenever a condition is specified for one of the parties to a marriage contract and the marriage contract is based on that condition, and after [execution of] the marriage contract it is determined the contract lacks that condition, the opposite party has the right of revocation.

(2). Whenever virginity is clearly considered a condition within the marriage contract and the marriage contract is based on that condition, if it is later it has been revealed that the wife was not a virgin before marriage, the husband has the right to revocation; if he has not revoked [the marriage contract] and it is proven that the reason for the loss of virginity is from

jumping and hopping, the amount of her *Mahr* that was promised to her should be reduced to the *Mahr* of a non-virgin woman [for example the *Mahr* of a widow in her community]. If virginity was not a condition [within the marriage contract] and the husband has been deceived by the wife, her guardian or her agent, the husband has the right to revoke or reduce the *Mahr*.

### Concealment of Fraud

#### **Article 146:**

(1). Concealment of fraud is an expressed or implied intentional act by one side in contract or the silence regarding the concealment of fault and defect so that if the opposite side was aware he/she would not agree to the marriage contract; or the lack of specific characteristics articulated to entice the other party [into the contract].

(2). A person who conceals fraud according to the provisions of this law is required to pay damages suffered by the other party; but if the concealment of fraud has not been done by the couple, there is no right to choose [revocation of the marriage contract].

(3). Concealment of fraud is determined by traditions and habits; if there is difference between traditions or a lack of tradition, a judge has the authority to decide.

### Revocation of the Marriage Contract [automatic]

#### **Article 147:**

Revocation [automatic] is the dissolution of a marriage contract without the intent of either side within of the marriage resulting from the following:

1. change in gender/sexuality of one of the spouses
2. one of the spouses commits apostasy
3. sworn malediction
4. discovery, after [execution of] the marriage contract, that there is a breast-feeding relationship between the couple.

### Change of Gender

#### **Article 148:**

Intentional change of gender by one of the spouses shall result in dissolution of the marriage contract and the spouse changing gender shall pay damages suffered by other spouse, to be on the safe side [however], divorce should be pronounced [formally]; if the change of gender [of the male] occurs after sexual penetration, *Mahr* shall be required.



## Apostasy

### **Article 149:**

Apostasy is leaving the Islamic faith, through denying Allah or the Messenger Prophet Mohammad (PBUH) or all the messengers or by denial of the fundamental provisions of the Islamic religion (as accepted by all Muslims) which results in denial of the Prophet Mohammad's prophecy and is of two kinds:

1. Public apostate is a person whose parents were not Muslims during his/her birth and have converted to Islam after adulthood, and later became a non-Muslim.
2. Inherent apostate is a person one of whose parents is a Muslim during the time of his/her birth, and he/she was a Muslim and later became a non-Muslim.

## Consequences of Apostasy

### **Article 150:**

In the case of apostasy the results are as follows:

- (1). If one of the members of a married couple before sexual penetration and after conclusion of the marriage contract becomes apostate, the marriage contract shall be terminated automatically. If the apostate is a woman, her *Mahr* will be cancelled, and if the apostate is a man, he is required to give half of the *Mahr* to the woman.
- (2). If apostasy happens after sexual penetration and before ending the time of *edat*, and the apostate shall accept Islam again, the first marriage contract is considered enforceable and if he did not return to Islam again, the marriage contract shall be terminated or cancelled. In this case, the woman shall be separated from her husband from the time of apostasy and is entitled to the entire *Mahr*.
- (3). If the apostasy of the husband is inherent, the marriage contract shall be terminated from the time a person become an apostate and sexual intercourse shall not affect the marriage contract.
- (4). if the husband of the wife who believes in the holy books [Bible, Torah, Zaboor] becomes a Muslim, the marriage contract is effective (whether the conversion has happened before or after the contract).
- (5). If the wife who believes in the holy books becomes a Muslim before sexual penetration, the marriage contract is void, and she is not entitled to *Mahr*.
- (6). If the wife who believes in the holy books becomes a Muslim after sexual penetration, and if the husband becomes a Muslim before completing the time of *edat*, the first marriage contract is valid. Otherwise, as soon as the wife becomes a Muslim, she shall be separated from her husband.
- (7). If a non-Muslim man and woman who do not believe in the holy books become Muslim before sexual penetration, the marriage contract shall be immediately revoked; and if conversion to Islam happens after sexual penetration, the marriage contract shall be revoked

after ending the time of *edat*, and where the other party to the marriage contract becomes a Muslim, the marriage is considered valid.

#### Sworn Malediction [curse of Allah]

##### **Article 151:**

(1). Causes of sworn malediction are as follows:

1. When a husband without any reason or evidence accuses his wife with whom he has had sexual penetration, of adultery and she is not known to be an adulteress.
2. When a husband without any reason or evidence denies fathering his child whose birth resulted from his sexually penetration of his wife.

(2). Where the husband accuses his deaf and dumb wife of adultery, the sworn malediction shall not be enforced, and from the time of the accusation of his wife, the wife shall be considered unlawful (*haram*) for the husband.

(3). Sworn malediction is considered valid when both parties are adults, sane and free [not slave].

#### Methods of Performing Sworn Malediction

##### **Article 152:**

Married couples shall perform the following acts in Arabic or in their native language in a standing position in front of the court:

1. First the husband shall say four times: “I swear to Allah that the act for which I am accusing my wife is true.”
2. Then, the court shall advise the husband, and if the husband accepts that he was wrong [that he wrongfully accused his wife], he shall be punished; but if he does not agree that he was wrong, then for the fifth time the husband shall say “Allah curse me, if what I accused my wife of, is not true.”
3. Then the wife shall say four times: “I swear to Allah that what I have been accused of is not true.”
4. Then the judge shall advise the wife, and if she confirms her husband’s accusation, she shall be punished; but if she does not agree that her husband was right, then for the fifth time she shall say “anger of Allah be on me if what my husband accused me of is true.”
5. If it is possible, the above statements shall be pronounced in the Arabic language, otherwise another language is sufficient.

#### Consequences of Sworn Malediction

##### **Article 153:**

When there is sworn malediction the marriage contract is terminated, *had* of *qazaf* or punishment for false accusation of sexual intercourse shall be cancelled, and the husband shall deny that he is the father of the child.





## Revocation of the Marriage Contract as a Result of Breast-feeding

### **Article 154:**

Breast-feeding after fulfilling the conditions set forth in this law, and after marriage, shall create a breast-feeding relationship, and shall cause the marriage contract to be automatically terminated.

## Divorce

### **Article 155:**

(1). Divorce is the dissolution of a marital relationship that according to the provisions of this law shall be done by the court or by one of the marriage couple.

(2). The husband is required to perform all the commitments or obligations resulting from the marriage contract such as *Mahr* and maintenance of the wife.

(3). If the husband has granted his wife the right to divorce, the wife can divorce herself. In this case the husband is required to perform all the commitments mentioned in paragraph 2 of this article.

## Divorce by Court

### **Article 156:**

(1). The wife can complain to the court if the husband fails to provide her maintenance; the court shall give the husband two options: either to provide maintenance or to divorce [his wife]. If the husband refuses [either one of them], the court shall issue the divorce order; and also concerning the *Ilaa* (the foreswearing by the husband of conjugal relations), the *Mujtahid* [clergy practicing religious jurisprudence], who meets the requirements of Shia faith can carry out the divorce.

(2). Where the request for divorce comes from either of the parties, the court shall first appoint two arbitrators [could mean mediators] from amongst their relatives to try to reconcile the couple.

## Elements of a Valid Divorce

### **Article 157:**

Elements of a valid divorce are as follows:

1. pronouncement of divorce
2. divorcer
3. divorcee
4. witnesses

## Divorce Pronouncement

### **Article no 158:**

(1). In the pronouncement for divorce, the terminology that specifies the wife in divorce shall be used before the word *taleq* such as *zujate taleq*.





- (2). When possible, the pronouncement for the divorce shall be recited in the Arabic language; otherwise, express words signifying divorce shall be used.
- (3). The husband and the wife can assign another person as an agent to perform the pronouncement for divorce.
- (4). The pronouncement for the divorce must be undertaken according to the conditions of a valid divorce and its conditions, otherwise it is considered invalid. If after the performing of the divorce pronouncement it has been revealed that the pronouncement for the divorce has not occurred correctly, the divorce is considered invalid.
- (5). The performing of three divorce declarations in one session is invalid. Performing several divorce declarations independently without returning to the wife is considered as one divorce.

### Criteria of the Divorcer

#### **Article 159:**

- (1). A person pronouncing divorce shall be an adult, sane, free and have the intention to utilize the words of divorce in the prescribed formula; provided that, a pronouncement of divorce by a person who is intermittently or temporarily insane shall be accepted if it is shown that the pronouncement was made during a period of lucidity.
- (2). A natural guardian, trustee or court appointed guardian, and supervisor may divorce the wife of a permanently insane person before the court by proving that it is in the interest of the permanently insane person but they may not divorce a minor [under aged] wife.
- (3). An imbecile may divorce his wife, but all the financial consequences flowing from such a divorce shall be the responsibility of his guardian.
- (4). Duress invalidates the contract of divorce under the following conditions; later consent is of no effect on it:
  1. The person exerting duress is in a position of dominance and is able to exercise it.
  2. The person subjected to duress is unable to repel or resist the duress.
  3. The duress is such as to cause harm to life, property or the reputation of the person threatened or of his family and is not inconsequential.
- (5). If after pronouncing divorce according to the prescribed formula, and after the expiration of the waiting period (*edat*), the husband claims that he had no intention of divorcing his wife, his claim shall not be heard, except in revocable divorces.

### Criteria of the Divorcee

#### **Article 160:**

- (1). Divorce of a wife who has had sexual penetration, and has reached puberty and is not pregnant, is invalid. Divorce of a wife, who has not been penetrated, or if she is pregnant, and is during her menstruation period or post-partum bleeding, is valid.
- (2). Whenever a man (whether physically present or not) is for some reason unaware of his wife's menstrual and post-partum bleeding status, and from the previous habits and

circumstances knows that she is pure (she is not facing menstruation or post-partum bleeding), the divorce is considered valid. However, if he later learns that at the time of pronouncement of divorce his wife was impure then, as a precaution he shall repeat the pronouncement after a one month period of separation. If, by means of telephone or other means, he learns about the time of menstruation, he must ensure that the wife is not in a state of menstruation during the pronouncement of divorce.

(3). Divorce of the wife who has had sexual intercourse in the time of *tohor* (time between two menstrual periods) is considered invalid unless the wife is pregnant, menopausal, a minor or if her husband is absent. If the husband has difficulty in establishing his wife's pureness or impureness status then the validity of the divorce will be considered according to the provision of paragraph 2.

(4). If the wife at the time of divorce claims that she is in state of pureness and after the pronouncement of divorce she claims that she was not pure from menstruation then the divorce is valid unless the wife proves her claim.

#### Witnesses

##### **Article 161:**

The pronouncement of divorce shall be made in front of and within the hearing of two male witnesses, provided that if after the pronouncement of divorce it is later revealed that one or both the witnesses was not fair and just, the divorce shall be invalid.

“Fairness” and “justness” of a person means, performance of all the religious duties and abstaining from all illegitimate acts out of fear of Allah.

#### Types of Divorce

##### **Article 162:**

Divorce according to its consequences is as follows:

1. Irrevocable divorce (*bayen*): under *bayen* divorce, the marital relationship is irrevocably dissolved and there is no right of return.
2. Revocable divorce (*rajyee*): under *rajyee*, dissolution of the marriage contract is suspended until expiration of the *edat* period, and the husband may return to his wife during the *edat* period at which point the divorce shall become invalid.

#### Irrevocable (*Bayen*) Divorce

##### **Article 163:**

Divorce of a wife is irrevocable under the following circumstances:

1. Where the wife has not been sexually penetrated.
2. Where the wife is in a state of menopause.
3. Where the divorce is pronounced following two prior revocable divorce pronouncements.
4. Where the wife is a minor [under aged].

5. Where the divorce is sought by the wife by offering a financial consideration (*khola*).

### Khola Divorce

#### **Article 164:**

(1). Whenever the wife hates living with the husband, and both parties fear acting contrary to Sharia provisions, then the wife or her guardian may pay compensation to the husband and convince him to agree to a *khola* divorce.

*kerahat* [extreme hatred] by the wife of her husband may be due to inherent characteristics such as ugliness or external actions such as a second marriage.

(2). If the compensation offered does not meet the criteria of eligibility due to lack of awareness due of lack awareness of criteria of eligibility, *Khola* divorce is valid, and the wife is responsible for the payment of the price; for example, if the wife offered honey as compensation but it is later revealed that it was wine [that would be invalid].

(3). Where the compensation has been damaged or is defective before its submission, then the wife is responsible for its replacement, its price or a substitute of equivalent value.

(4). The compensation has the same conditions of the marriage-dowry mentioned in paragraph 1 of article 123, and its amount shall be determined by agreement of both parties. If after divorce there is a dispute as to the amount or item offered, the wife's claim on oath shall be given priority.

(5). If a wife has to pay compensation or is forced to pay compensation due to mistreatment by her husband or as a result of violating her matrimonial duties, and divorce happens under conditions similar to *rajyee* divorce (revocable divorce) it will be considered *rajyee* or revocable divorce, unless it is considered *bayen* divorce (irrevocable divorce), and in that case the husband shall not be entitled to compensation.

### Pronouncement of khola Divorce

#### **Article 165:**

(1). The *khola* divorce shall be pronounced in Arabic language, and shall be made in one of the following ways:

1. First the wife shall say: "I offer this property in order for you to divorce me." Then the husband shall reply "I shall divorce you (*khola*) if you give me the said property."
2. First the husband shall say: "I divorce (*khola*) you if you give me the property" or "I divorce (*khola*) you (*state the name of wife*)" and the wife shall accept.

(2). In validation of the *khola* divorce, the customary sequence of offering of the compensation by the wife and the divorce pronouncement by the husband are considered conditions, otherwise the divorce occurred in accordance to *rajyee* (revocable divorce). Nevertheless, it may still be considered a *bayen* (irrevocable) divorce, but the husband shall not be entitled to compensation.



(3). A third person without power of attorney or right of guardianship cannot offer the property to request the husband to divorce his wife. The wife also cannot offer property from others as compensation. If property owned by others has been mistakenly offered, the *khola* divorce shall be valid but the wife shall be responsible for the replacement or its equivalent value [of the compensation] to the husband.

### Consensual Divorce

#### **Article 166:**

(1). If husband and wife extremely hate each other and the wife, by offering compensation not being more than *Mahr*, and her husband agrees to divorce her, then the divorce is a consensual divorce.

(2). The divorce pronouncement in a consensual divorce requires that the husband say to his wife: “*I divorce you in accordance with the consensual divorce.*” If the husband does not know the Arabic language, another person shall be selected as his attorney with knowledge of the Arabic language to make the divorce pronouncement.

(3). In *khola* and *consensual* divorce, if the wife returns, she can reclaim the compensation [that was offered by her]; in which case the *khola* and the consensual divorce become a *rajyee* (*revocable*) divorce.

(4). The wife can reclaim the compensation under following conditions:

1. If the waiting period *edat* has not expired.
2. If the divorce is under circumstances where the husband can return to his wife, such as where the wife is in menopause, or has not had sexual penetration, or if she is not in her third divorce.
3. If the wife reclaims the compensation offered, the husband shall be informed, otherwise the reclamation shall be invalid.

(5). The validation conditions and provisions regulating *khola* and *consensual* divorce are the same as those relating to *rajyee* (*revocable*) divorce.

## Rajyee (Revocable) Divorce

### **Article 167:**

- (1). With regard to a *rajyee* divorced wife, during the waiting period (*edat*), all the rights accruing from marriage (maintenance and inheritance) are enforceable.
- (2). In circumstances where *khola* or consensual divorce may convert to *rajyee (revocable)* divorce the provisions of *rajyee* divorce apply.
- (3). The husband may not deprive himself of the right to return to his wife in the beginning or during the *edat* of the revocable divorce.
- (4). The wife cannot deprive herself of the right to reclaim her compensation in the beginning or during other contracts [in case there are other contracts between the parties], or settle for reconciliation.

## Conditions for Resumption of Marriage by Husband in a *rajyee (revocable)* Divorce

### **Article 168:**

- (1). Resumption (*rojo*) means returning the *rajyee* divorced wife to the previous marriage contract before the expiration of the *edat* (waiting period.)
- (2). Resumption or *rojo* in *rajyee* divorce occurs by means of explicit word or actions that show the intention of returning and a dumb person may return by giving understandable indications or showing sexual lust.
- (3). The wife's knowledge and agreement to the resumption in *rajyee* divorce is not necessary, but upon learning about the date of resumption, she is obliged to perform all her marital duties.
- (4). In consideration of the best interests of the ward, a guardian or court-appointed guardian of a permanently insane person may make him return to the wife in a *rajyee* divorce.

## Conflicts as a Result of Divorce

### **Article 169:**

- (1). If the divorced wife claims that the divorce was pronounced during a period when she was in a state of menstruation, and the husband denies that claim, in absence of sufficient evidence, the statement of the husband under oath shall be considered acceptable.
- (2). If the wife claims the expiration of the *edat* period because of having completed her third menstrual cycle but the husband claims that he returned to his wife before the expiration of the *edat* period, then in absence of sufficient evidence, the statement of the wife under oath shall be considered valid. However, a under claim of physical return the wife shall take an oath that there was no physical return and an oath of lack of knowledge a verbal return
- (3). If the husband claims that he returned to his wife and the wife confirms it, but contends that his return was after the expiration of the *edat* period, then the statement of the husband under oath shall be considered acceptable.
- (4). If at the time of or after divorce the wife claims that she is in sexual *tohor (between two menstrual periods)* period, but the husband denies it, then the statement by the husband under

oath shall be accepted. And also if the parties dispute the expiration of the *edat* period, then the statement of the husband under oath shall be accepted.

(5). If one of the parties claims that it is the second *rajyee* (revocable) divorce, and the other claims it is the *third divorce*, then in absence of sufficient reasons, the statement by the one claiming *rajyee* (revocable) divorce under oath shall be considered valid.

#### Dissolution of the Marriage Contract by Death

##### **Article 170:**

The marriage contract is dissolved by the natural or legal death of one of the marriage parties.

#### (Edat of Divorce, Revocation and Automatic Termination of the Marriage Contract)

##### **Article 171:**

(1). *Edat* is the period in which a woman after dissolution of the marriage contract or mistaken sexual penetration shall be required to abstain from entering into a marriage contract.

(2). *Edat* of a divorced woman, under a revoked marriage and an automatically terminated marriage contract of a woman who is not pregnant, is the completion of three *tohor* periods unless by reason of old age the woman is unable to have menstruation in which case the *edat* time is three lunar months.

(3). Three *tohor* (time between menstrual periods) shall be determined from the time divorce occurred until the third menstrual period starts.

(4). Menstruation is the monthly/periodic discharge of blood from a mature aged woman until menopausal age which is not less than 3 days and is not more than 10 days. Menopause is a situation in which a woman, after the age of 50 years, does not naturally experience menstruation.

(5). If after divorce a woman experiences only one menstrual period and then becomes menopausal, then two additional lunar months shall be required for the completion of *edat* and if after two menstruations she becomes menopausal, then completion of *edat* shall require one more month.

(6). *Edat* of a divorced woman, under a revoked marriage and an automatically terminated marriage contract of a pregnant woman is the end of pregnancy.

(7). A divorced woman who is menopausal and has not had sexual penetration or if she is a minor does not have *edat*.

#### Edat (waiting period) of a Lost [absent] Husband

##### **Article 172:**

(1). A wife whose husband is absent who has acquired a court verdict of divorce on the basis of the death of her husband shall have the same *edat* as the *edat* of death.



(2). If the wife of an absent husband was not aware of her divorce from her husband, the time of her non-awareness of her divorce is considered a part of the *edat* period.

Edat of a Mistaken Sexual Penetration

**Article 173:**

(1). If a married woman has had mistaken sexual penetration then her husband shall not have sexual penetration with her during the *edat* period.

(2). If a woman has had mistaken sexual penetration, provisions applicable to a divorced wife are also applicable to her, and her *edat* period shall start from her last sexual penetration.



## Edat of Death

### **Article 174:**

(1). The *edat* period of a woman who is not pregnant is four months and 10 days from the time of her husband's death and the *edat* period of a pregnant woman whose husband has died shall be the longer of either four months and ten days or the end of pregnancy.

(2). If the wife was not aware of her husband's death as a result of imprisonment, illness, absence or other causes, her *edat* shall start after the date she becomes aware of her husband's death.

(3). If the husband dies before the expiration of the *edat* period of *rajyee* divorce, the wife shall complete the *edat* period of death and the days of the previous *edat* shall not be considered as part of the *edat* period of death. If the wife is pregnant she is liable to spend the longer of either four months and ten days or the end of pregnancy.

(4). If the *rajyee* divorced wife remarries another person after expiration of the *edat* period and then discovers that her husband died before the expiration of the *edat* period, in such situations the wife is liable to complete the *edat* period of death.

(5). If two different *edat* periods overlap, the *edat* period of the one that happened first shall be completed first. The second *edat* shall continue from the time the cause arose until its end, unless one of these two *edat* was pregnancy in which case the pregnancy *edat* shall have priority.

## Claim of Share and Wage of the Wife

### **Article 175:**

If the wife after divorce or death of her husband claims that she had a share in her husband's property, or claims that the house chores she has done were not for free, or desires the wages for the chorus she has done in her husband's house, the court shall consider her claims according to provisions of Islamic Jurisprudence (*Feqh*).

## **CHAPTER EIGHT: MAINTENANCE**

### Definition and Reasons for Maintenance

#### **Article 176:**

Maintenance consists of the basic necessities of life that are needed for a person, according to custom, such as food, clothes, residence, medical treatment and the like. Its reasons are as follows:

1. Permanent marital relationship.
2. Relationship according to the provisions of this law.

### Maintenance of the Wife

#### **Article 177:**





- (1). The husband by concluding a valid marriage contract and wedlock is obligated to provide maintenance to his wife and if he refuses, he shall be considered his wife's debtor.
- (2). Until a disobedient wife pronounces herself obedient either by words or by action, and the husband has access to her, maintenance shall not be provided, unless non access of the husband to his wife was because of his inability or bad intentions [or was beyond his control].
- (3). If a wife's lack of *tamkeen* [submission to husband's sexual desires] is consistent with provisions or this law or Sharia-approved excuse and reasonable excuses, or with the permission of her husband she is entitled to maintenance. If the wife's lack of *tamkeen* is because of her husband's insistence on acts that are against law and Shariah, she is allowed not to submit herself to the husband and she is entitled to maintenance.
- (4). *Tamkeen* is the readiness of the wife to submit to her husband's reasonable sexual enjoyment, and her prohibition from going out of the house, except in extreme circumstances, without her husband's permission. If any of the above provisions are not followed by the wife she is considered disobedient.

### Providing Maintenance of the Wife

#### **Article 178:**

- (1). Maintenance shall be provided at the wife's choice according to one of the following ways:
  1. The husband shall provide all necessities of life to his wife set forth in this law.
  2. Maintenance of the wife shall be paid as cash at least everyday.
- (2). Maintenance is a wife's right, irrespective of a [court's] order. If the husband refuses to pay maintenance, the wife can spend reasonably from the property of her husband or complain to the court. In case of the death of the husband, the maintenance of the wife shall be provided from the husband's *taraka* [estate].
- (3). The wife is entitled to receive maintenance in *edat* of *rajyee* divorce, during pregnancy, during *Bayen* divorce, and during revocation of the marriage contract.
- (4). If a disobedient wife is given a *rajyee* (revocable) divorce, or if she becomes disobedient during the *edat* of *rajyee* divorce, the right of maintenance shall be cancelled or terminated, unless the wife is pregnant; in this case the wife and husband shall compromise [on the amount of her maintenance].
- (5). If the husband is unable to provide maintenance, the wife can ask the court for divorce. But if the wife waits for the husband to become able to provide her maintenance then the husband is debtor of the wife, and she can ask the husband to provide her the unpaid previous maintenance.
- (6). If the husband fraudulently agrees to pay maintenance at the of the marriage contract, the wife may dissolve the marriage contract if the husband is unable to provide her maintenance.
- (7). If the husband refuses to provide maintenance, the court will determine the maintenance and require the husband t provide it. If husband cannot be obligated to pay maintenance the

court will extract the maintenance from the property of the husband. If the husband does not have property or if he does not have access to his property, upon the request of wife the court shall require the husband to divorce his wife. If he refuses the court will enter a divorce order on his behalf.

(8). Goods and materials included in the maintenance which can be destroyed or depreciated (such as foodstuffs and fuel) are the property of the wife. Goods and materials included in the maintenance which are permanent in nature (such as gold, cloth, and home appliances) are the property of the husband, unless they are owned by the wife.

## Wife's Residency

### **Article 179:**

(1). The wife is obligated to stay in a residency provided by the husband, unless the determination of residency is given to the wife during the marriage contract or her staying in the residency causes fear of financial loss, physical harm, or is detrimental to her dignity.

(2). The wife may in consideration of her status or the requirements of custom or tradition, refuse to stay in the house of her husband's parents or other persons.

## The Income from Wife's Occupation

### **Article 180:**

The income derived from wife's occupation is hers, if she works, unless she pays some part of the home expenses with the permission of her husband.

## Relatives' Maintenance

### **Article 181:**

(1). The following persons are obligated based on provisions of this law to provide maintenance to the following relatives:

1. Genealogical parents (grandfather, great-grandfather, etc) including paternal and maternal.
2. Genealogical sons (grandson, great grandson, etc).

(2). A child is obligated to provide maintenance for his/her parents even if the child is the offspring of a mistaken [sexual relationship] or adulterous relationship.

(3). The maintenance of grandchildren is part of children's maintenance, however, maintenance of a daughter-in-law is not obligatory.

(4). All types of treatment including medical expenses and preventative expenses of an illegitimate pregnancy and the maintenance of the child born of the illegitimate relationship are the responsibility of the father if proved by medical tests or upon his confession. If the adultery is the result of the guilt of both the man and the women, in this case both of them will pay the expenses equally, however the man has principle responsibility.

(5). Relatives who are traditionally poor and cannot provide for their livelihood, despite having an occupation, are eligible to be provided with maintenance.

(6). The maintenance of relatives shall be paid by the following categories of persons in the following order (even if they are non-Muslims), and if one category is unable to pay maintenance the next category is responsible:

1. father
2. paternal grandfather (great-grand father, etc)
3. children (grandchildren, great-grandchildren, etc)
4. mother



#### 5. maternal parents, great grandparents and descendents

- (7). If there is more than one person in each class who is obligated to provide maintenance, then they must provide equally, unless some of them do not have the financial capacity.
- (8). The person with the financial capacity to do so, is obligated to provide maintenance, and if his assets exceeds his and his wife's daily needs and expenses.
- (9). The court will determine the ability of the maintenance provider and the amount of maintenance to be provided.
- (10). If a person does not have the ability to provide complete maintenance of relatives, the difference in the maintenance will be provided by the next class.
- (11). Eligible relatives who request maintenance from the provider are entitled to have it provided from the time of eligibility; this shall include any time in which the question of maintenance is being adjudicated in court.
- (12). If the provider's assets are insufficient to provide maintenance to relatives, the relatives' maintenance has priority over the maintenance provider's debt.
- (13). The maintenance provider can provide goods or services or cash to eligible relatives; however if the receiver of the goods and services deems that the goods and services are beneath his/her dignity or harms his/her status, then the provider shall provide cash [instead] provided that he/she has the ability to do so.
- (14). If the maintenance provider is absent or refuses to provide the maintenance, or if the obligation cannot be enforced against him, then the court will order that maintenance to be paid from the provider's assets. However, if the assets are inaccessible then the court shall order [someone] to borrow money for the account of the maintenance provider. If the maintenance provider is unable to pay these debts the next class will become responsible to pay the debts.

#### Medical Treatment, Marriage Expenses and Debt of Relatives

##### **Article 182:**

- (1). The expenses of medical treatment for every kind of disease and medical condition and her eligible relatives are part of maintenance, unless the disease or condition existed before the marriage.
- (2). The expenses of relatives' marriage and their debts are not part of their maintenance; however, if the maintenance provider will not be able to continue to provide maintenance to his/her relatives if he/she marries, then he/she may proceed with the marriage [and will not be required to provide maintenance to his/her relatives].

#### Criteria for Determining Maintenance

##### **Article 183:**

- (1). The criteria for determining maintenance to relatives is in accordance with tradition and the ability of the maintenance provider to provide maintenance. The criteria for determining



the wife's maintenance is in accordance with wife's status and the husband's ability to provide maintenance.

(2). The agreement made by the maintenance provider and the maintenance receiver about the quantity and quality of maintenance is not binding after a change in status and conditions of either [party].

(3). Commitment and guarantee [could be written] to provide maintenance that is the interest of the maintenance provider for ensuring the receiver has received maintenance is permitted.

(4). In the wife is used to having a servant, or based on her status or because of disease or disability, and the relative are unable to assist, the maintenance provider shall be obligated to do the work [house chore] or to hire a servant.

### Waiver of Maintenance

#### **Article 184:**

The wife and relatives can waive the right to receive [previously entitled] maintenance from the maintenance provider, if the maintenance provider refused to provide maintenance, or for any other reason.

### Maintenance Loss

#### **Article 185:**

If the maintenance is lost after being delivered to the maintenance receiver, without any fault, the maintenance provider is required to provide it again, unless the maintenance receiver is the wife and she has financial ability.

If food is wasted the husband is not required to provide it again, but he is required to replace clothes, soap and other similar items.

The civil liability of the receiver of maintenance against the provider of maintenance does not require compensation, except wife, depending on the financial ability of the maintenance provider.

### Collective Duty to Provide Maintenance

#### **Article 186:**

Relatives who inherit from each other are not required to provide maintenance for each other. But if there is no maintenance provider all relatives near and distant and even all society are required to provide basic maintenance for survival.

### Disputes Relating to Maintenance

#### **Article 187:**

(1). If the husband claims to have provided the maintenance and the wife denies it, if there is a lack of evidence, the statement of the wife under oath is acceptable.

(2). If the wife claims that she was ejected from home by her husband, or she left the home with her husband's permission, if the husband claims that she was disobedient, then the wife

shall prove [she was not disobedient]; otherwise the statement under oath of her husband shall be accepted.

#### Maintenance of Necessities

##### **Article 188:**

When it becomes clear that the relatives have spent the maintenance in an illegal way and against Sharia (alcohol, gambling, narcotics etc.), the obligation of providing the maintenance will be limited to basic necessities.

### **CHAPTER NINE: CHILDREN**

#### Genealogy

##### **Article 189:**

(1). Children born during the marriage are related to the parents, provided that the sexual penetration occurred during the marital relationship. The child must be born at least 6 months after the marriage began and not more than nine months from the beginning of the pregnancy.

(2). If a child is born after a marriage dissolution, he/she is related to the husband, provided that the child is born during the nine months [lunar calendar] after the last sexual penetration, and wife has not remarried, even if she committed adultery.

(3). A child born after the marriage dissolution, if the woman has married, the child is related to the second husband, provided that nine months have passed from the dissolution of the first marriage and six months have passed from the new marriage.

(4). If it is impossible to determine that the child's relation to either of the husband, then the child is not related to either of them. If it is possible to relate the child to one of the husbands, then the child is related to that husband; if it is possible to establish the child's relationship to either of the husbands, according to Sharia the child is related to the second husband because he is the owner of the bed. Also, instead of the second husband the child can be related to the person who performed mistaken sexual penetration.

#### Combination of Sperm

##### **Article 190:**

(1). Combining a strange man's sperm with a strange woman's egg for medical purpose in a laboratory is permitted, but transferring a conceived egg into a woman's womb is prohibited, and if this happens [transferring conceived egg to a woman's womb] then the child resulting from the procedure is the child of the owners of the sperm and the egg. In that case the provisions of this law shall apply in establishing the blood relationship and inheritance.

(2). Transfer of a strange man's sperm to a strange woman's womb by medical procedure other than by adultery is prohibited, however in the case of such transfer the resulting child is

the child of the owners of the sperm and the egg. In that case the provisions of this law shall apply in establishing the blood relationship and inheritance.

(3). Combining the sperm and egg of a married couple during marriage or after the husband's death or marriage dissolution is allowed. However, transferring of a conceived egg into the wife's womb is prohibited, based on *Ehteyat-e-Wajeb*. In the case a child is born [as result of this procedure] the child belongs to the owners of the sperm and the egg. In that case the provisions of this law shall apply in establishing the blood relationship and inheritance from mother.

#### A Child Resulting from Mistaken Sexual Intercourse, or Invalid *Nekah*, or Adultery

##### **Article 191:**

(1). A child resulting from mistaken sexual intercourse between two persons unrelated, and belonging to the couple, providing that the child shall be born six months after the first sexual penetration or nine months after the last sexual penetration, establishes the relationship between the child and parents; but if one of the persons in the couple has knowledge about the prohibition of illicit sexual intercourse, then their actions are considered adultery and the child is illegitimate.

(2). A child resulting from an invalid marriage belongs to the parents, and heredity exists between them, provided that both of them are ignorant about the invalidity of the marriage contract, but if one of the persons in the couple has knowledge about the prohibition of illicit sexual intercourse, then his/her actions are considered adultery and the child is illegitimate.

(3). A child born from adultery cannot take inheritance from his/her father, and the father and relatives of the child cannot do the same, but other provisions related to the genealogy (such as prohibition of marriage) shall be implemented to him/her.

(4). If child born from mistaken sexual intercourse between a male and a married woman, or woman in *edat*, according to the provisions of this law, can be proven to be the child of either party [husband of the married woman and another male], then lots shall be drawn to determine the father; if the establishment of the relationship is impossible to determine, then the child shall be disavowed as to both parties.

#### Proving Genealogy

##### **Article 192:**

(1). The proving of genealogy is as following:

- 1- *confession*
- 2- *sexual intercourse*
- 3- *witness*
- 4- *Sheyaa Mawred Wosoq [common knowledge]*
- 5- *definite evidence*





- (2). *Implied and* express confession by intention and consent is the proving of genealogy, unless his/her confession is proved wrong; however the denial of a son after a confession shall not be heard.
- (3). Conditions of and legal effects of confession to genealogy is as following:
1. Realization of genealogy is possible due to the provisions of this law.
  2. The person about whose genealogy the confession has been done shall ratify, unless he is a minor, insane, or dead.
  3. There shall not be any dispute between them.
- (4). A legal effects of proving genealogy are limited to the acknowledged and acknowledgee, and does not have any legal effects to other relatives.
- (5). A confession of a person concerning the genealogy of a minor or insane person, shall not be heard, if such confession favors him/her and there is a lack of absolute evidence.
- (6). The person who confesses a relationship, except as to his/her son, with the confirmation of the confessor, or providing proof through the presentation of evidence or witnesses, shall establish a legal relationship [such as son of son or brother].
- (7). If the absolute evidence does not exist to prove whether the child has been fathered by another man [other than the husband of the wife], the child belongs to the husband of the wife [referred to as *Ferash* or the owner of the bed].
- (8). *Ferash* is the sleeping together of a married couple in the same bed; such meaning includes the current owner of the bed, or it can mean the lawful sexual penetration as a result of a marriage contract, or mistaken sexual penetration.

#### Denial of Parentage

##### **Article 193:**

- (1). The denial of parentage is demonstrated when there is lack of *Ferash* and confirmation of a lack of sexual penetration and/or *Lea'an* [sworn malediction]. If there are evidentiary reasons to relate a child to the husband, the husband, even if he has evidence of his wife's adultery, cannot deny the child.
- (2). Any interested person may deny the legitimacy of a child by proving lack of *Ferash*; however any proof against the evidence of *Ferash* and *Lea'an* is confined to a husband and wife.
- (3). Upon the occurrence of a sworn malediction, the inheritance of a child from his/her father and father's relatives' is denied, but the legal effects of the child's genealogy remain to the mother and mother's relatives.
- (4). Claims against *Ferash* can be proved by the following:
1. The final proof of no sexual intercourse with the wife, and lack of ejaculation of sperm in the womb of that woman.
  2. Lack of vital signs in a man's sperm before the actual date of conception.



3. Sworn malediction.
4. Medical examination which definitively proves there is no *Ferash*.
- (5). When an interested party proves no sexual intercourse between a man and woman occurred in one bed, in this case the decision of a judge is enforceable just to the rights associated with the persons in the lawsuit.
- (6). The denial of a child by the husband shall occur after the birth of the child, during which time the denial is possible, otherwise silence during this time is considered a confession as to fathering the child, unless there is suspicion concerning the time of the pregnancy and the delivery date.
- (7). A judge can order a medical checkup in cases of necessity, and for purposes of proving the legitimate father, even if the claimant opposes such checkup.
- (8). The court shall appoint a temporary guardian for the child, until the final proof of the minor's genealogy.
- (9). When a husband claims the birth of the child occurred before six months [lunar calendar] of the pregnancy, or after nine months [lunar calendar], and the wife denies such claim, and if the husband does not have sufficient evidence, the statement of the wife is acceptable and valid under oath.

### Child Support

#### **Article 194:**

- (1). Support means protection, Islamic education and hygiene, and medical treatment of a child up to seven years of age.
- (2). Support of a child is the duty and the obligation of the parents, and any kind of contract which denies this obligation is invalid.
- (3). The mother has custody of a girl up to seven years of age and of a boy up to two years of age. After the aforementioned periods, the father will have custody of the girl and the boy.
- (4). The mother can demand expenses of child support from the father, unless the child has assets.
- (5). When the father dies or is incompetent to support the child, then the mother is responsible, and if the mother dies or is incompetent to support the child, then the father is responsible.
- (6). Parents and legal guardians can discipline their children to the extent that does not require *dia* or [compensation for injury]; however any kind of extreme discipline can result in liability.
- (7). In case of incompetency or lack of parents, the child support is the responsibility of the paternal grandfather; if there is no paternal grandfather or due to his incompetency; the child support belongs to an executor [appointed guardian]nominated by them [parents/grandparents].

(8). In the of absence or incompetency of a guardian or executor, or if they refuse to support the child then the court shall appoint a protector.

(9). The person who has the responsibility for child support cannot prevent the right of parents and relatives to visit the child, nor can he/she take the child abroad or on an extended trip without the permission of the child's parents. The number of meetings and length of trip will be determined according to tradition, and the court will determine them in case of dispute.

(10). Breast-feeding of the child is the responsibility of the mother, unless it is harmful to her [health]. The mother can request compensation from the father, or in case of his inability to pay, she can request compensation from the paternal grandfather.

(11). When the child does not have a natural guardian or the natural guardian denies providing the compensation to the mother for breast-feeding the child, or obligating the natural guardian is impossible, then the mother is required to feed the child for free.

### Barriers to Child Support

#### **Article 195:**

(1). Barriers to child support are as follows:

1. Insanity of the child supporter.
2. Infidelity or apostasy of the child supporter when the child is a Muslim.
3. Marriage of a child's mother to someone other than child's father, unless it is in the best interest of the child, or the child's father is dead.
4. Immorality or addiction of the child's supporter, when the duties of child support cannot be properly met.
5. When the child supporter is suffering from a contagious disease which puts the health of the child at risk, or the child supporter is paralyzed and is unable to perform the duties of child support.

(2). When the obstacles to child support set forth in paragraph 1 of this article are removed then the right of child support will resume.

(3). When the relatives of a child take responsibility, not free of charge, for child support without going to court or any other [authorized] sources, with permission of a representative of a *Mujtahed*, and the child does not have assets, then the relatives can request compensation for the expenses of child support from the government, or in case of impossibility from the child when the child becomes an adult.

(4). Support of an insane child after puberty is subject to the provisions of guardianship and child support in this law. If a minor [under the age of 7] or an insane child, who is being supported [by someone], damages or harms another, the person supporting the child is liable to compensate the injured party, based on the compensation provisions of this law.



## PART THREE: PROVISIONS OF WILL, INHERITANCE, ENDOWMENT AND GIFT

### CHAPTER ONE: WILL

#### Definition and Types of Wills

##### **Article 196:**

A will is the manifestation of a person's intent, [whether in writing or oral] which becomes effective on the person's death and can be of two types:

1. An ownership will results when a person transfers the ownership of property or profit to a beneficiary, and the beneficiary verbally or by his actions accepts the property before or after the person's death. However, if the beneficiary rejects the property or profit before or after the death of the person, the will is invalid.
2. A committing will results when a person commits or requests someone else to do something after the person dies that does not directly involve the transfer of assets.

#### The Method of Making a Will

##### **Article 197:**

(1). A will is made when a person makes a clear written or oral declaration of his intentions, or by his actions makes his intentions clear, or if he is unable to speak by making clear gestures.

(2). If a will is conditional as to time or special circumstance then the will is valid upon the occurrence of those circumstances. For example, if a person says that if I die from this disease or if I die during the current year [the beneficiary will inherit the said property].

#### Elements of a Will

##### **Article 198:**

A will has the following elements:

1. Testator: the person who makes the will
2. Purpose of will: the testator shall identify the use to be made of the bequest.
3. Beneficiary: the person who receives the bequest.
4. Bequest: the subject of the will.
5. Executor: the person who is appointed to implement the will.

#### Conditions to Validate a Will

##### **Article 199:**

(1). The testator must be sane, not acting under duress, and own the goods or financial rights that are the subject of the will. An executor or guardian of a ward cannot make a will on behalf of the ward.



- (2). The purpose of the will must be Sharia-permitted. A will made for an immoral purpose is invalid.
- (3). The beneficiary shall meet the following conditions:
  1. Be alive at the time the will is made.
  2. Have the competency to possess goods.
- (4). The bequest shall meet following conditions:
  1. Exist when the will is made or be capable of existing in the future, including the actual property or the benefits flowing from the property such as right to *Tahjeer*.
  2. Must be specific or have the capability of being determined, such as a specific weight [item] in an unspecific total.
  3. Must be capable of being property regardless of quantity.
  4. Must have the capability of being possessed. Making a will that includes alcohol, gambling equipments or pork is prohibited.
  5. Must be capable of being transferred.
  6. Must be the current property of the testator, or become his property in the future.
- (5). Only one third of the bequest under a will that is made on the verge of dying is valid, and more than that [1/3] is subject to the other heirs' permission. If some of the heirs give permission [to the distribution of the bequest] than that amount shall be deducted from their share of inheritance. In the case of a one third will, if the testator is murdered, one third of the *dia* [blood compensation to the victim] shall be included in the will.
- (6). In the case of a one third will, if the heirs agree to give more than one third of the bequest to the beneficiary, then the beneficiary will receive more than one third.
- (7). Making a will to deprive legitimate heirs of their share of the estate is invalid.
- (8). If the testator is wasting his/her estate [with an intention to deprive the heirs of their lawful inheritance] the testator's will that may harm the heirs is invalid.
- (9). A son who is ten year of age and is sane can make a will for charity.
- (10). The will of a periodical insane and the will of a bankrupt person are valid; however, payment of a bankrupt person's debts and executing his/her commitments shall take priority over the provisions of the will.
- (11). When a person seriously harms him/herself with the intention of committing suicide, his will is invalid, unless he makes his will after recovery and treatment.

### Ownership Will

#### **Article 200:**

- (1). The beneficiary shall accept the will either before or after the death of the testator by his oral statement or action or that of his agent in order to validate the will. If the beneficiary accepts some but not all of the bequest the will is valid as to the accepted part of the bequest.



- (2). A will is valid as to forgiveness of debt without the express acceptance of the beneficiary [debtor].
- (3). Rejection of ownership of a will during the life of testator is invalid, but acceptance after rejection and rejection after acceptance, after the death of the testator does not affect the validity of the will.
- (4). If the beneficiary dies before acceptance [of the bequest] during the life of the testator or after his [the testator's] death, the heirs of the beneficiary have the right to accept or reject the will, unless the testator changes the will during his life [after the death of the beneficiary].
- (5). The guardian of an unborn child, after the child's birth, and the guardian of a minor and an insane person and an imbecile can accept or reject a will in the best interests of the ward.
- (6). The rejection of a will by a bankrupt person, after the issuance of court order for the purpose of preventing him from possession of assets, is valid.
- (7). Profits (definite or indefinite) derived from the bequest, after the death of the testator and the acceptance by the beneficiary, belong to the beneficiary.
- (8). If delay in the acceptance or rejection of the bequest caused by a beneficiary creates damage to heirs, the court shall require the beneficiary to make an immediate decision regarding the acceptance or rejection of the bequest.
- (9). If the bequest is not specific, the composition of it [bequest] will be determined by the heirs, unless it is described sufficiently in the will.
- (10). A fetus can be the beneficiary under a will. If the fetus is not born alive then the will is invalid. If the fetus is born alive and dies after being born, then the fetus' heirs become the beneficiaries under the will.
- (11). If the identity of the beneficiary cannot be determined in the will then the executor or the heirs will determine the identity of the beneficiary. If the beneficiary rejects the will, then the bequest will be given to another person in the same class.
- (12). A beneficiary can be an heir or someone who does not have any relationship to the testator.
- (13). If the bequest is wasted [destroyed] during the period between the death of the testator and the acceptance by the beneficiary, in the case where the bequest is a specific asset, the will is invalid; and the bequest will be removed from the estate.
- (14). If a bequest cannot be specifically identified then the heirs shall determine it [the bequest]. But if a specific object is mentioned then one sixth of that object will become the property of the beneficiary. If the word *Sahm* or [share of the object] is used then one eighth of the object will become the property of the beneficiary. If the word *Joz'a* [portion of the object] is used then one tenth of the object will become the property of the beneficiary.
- (15). The profits from a definite asset included in the bequest belongs to the heirs; the expenses of protecting the asset will be provided from the profits.

## A Committing Will

### **Article 201:**

(1). If the profit from the use of a definite asset for a specific time is the bequest, but the beginning time of the use is not specified in the will, the heirs will determine when the use commences.

(2). [in a committed will] the executor appointed by the testator has limited authority in performing the following affairs:

1. Guardianship of a child.
2. To manage one third of the assets designated for a specific purpose.
3. Management and distribution of the estate.
4. Any other tasks assigned to the executor, for example, printing the writings of the testator, collection of asset's income, and selling products [of the estate].

## Requirement for an Executor

### **Article 202:**

(1). The executor should meet the following requirements:

1. He/she should be an adult; if the executors are a minor and have not reached puberty, then the minor does not have the right to execute the will until he/she has reached puberty.
2. He/she should be sane.
3. He/she should be a Muslim.
4. He/she should be trustworthy [honest].
5. He/she should be competent to exercise property [related] and financial rights.

(2). If special qualifications are required of the executor and if he/she loses those qualifications then executor shall be dismissed.

(3). If the deceased has not appointed an executor the court upon request by the heirs and other interested persons shall, in consultation with Shiite scholars in that community, assign a trustworthy person [trustee] as the executor in which case [the court] shall consider the following:

1. Account for the estate and its distribution including payment of expenses, payment of debts and separating the assets that have been included in the deceased's will [from overall estate].
2. File law-suits against the debtors in case of nonpayment.
3. Pay the required funeral expenses of the testator.
4. Take necessary measures to maintain and prevent the estate from being wasted.
5. Perform all other tasks such as protection of minors and those with mental illness, and carry out economic transactions etc.,

(4). If the estate is wasted during administration of the will, the trustee is not responsible, unless he/she has acted against the provisions set by the testator in the will, or if he/she neglects to perform his/her duties according to the provisions of the will.

(5). The executor can reject appointment as executor of the will, and inform the testator before the testator dies. Otherwise the executor is obligated to execute the will, unless he/she is unable to execute the will, or he/she faces obstacles in the execution of the will, or if the execution is considered harmful to him/her [executor].

(6). The testator can appoint several executors, one after another, to execute the will.

(7). If the testator appoints several executors with a specified authority they should perform accordingly. Otherwise they [executors] are required to consult with each other. However, if that [consultation] is not possible the court shall split the task of the executors and if that too is deemed impossible the court shall appoint two other executors.

(8). The executors shall act in accordance with the terms of the will. If they are required to act collectively then they may not divide the assets in order to administer them separately.

#### Appointment of an Supervisor and a Trustee

##### **Article 203:**

(1). The testator can appoint one or more persons as supervisor to oversee the performance of the executor(s).

(2). In case of absence, inability, illness or death of one of the executors, with the same authority, or supervisor the court shall appoint another person as a trustee alongside the remaining executors.

(3). If the authority of the supervisor is not specified whether he/she is an *Etlayee* informant] or a *Esteswabi* [corrective supervisor: someone with authority to correct the actions of the executors] then he/she shall be considered *Etlayee*.

#### Expenses of Preserving the Properties or Objects Included in the Will

##### **Article 204:**

Expenses related to safe keeping of the estate of the testator until the completion of the administration of the will, shall be paid from one third of the estate, and benefits of the above mentioned assets belong to the beneficiary.

#### Withdrawal of the Will

##### **Article 205:**

The testator may revoke his/her will in total or in part by words or acts, which is considered withdrawal under existing traditions, before he/she dies. Also the testator can withdraw the will after the beneficiary dies.

#### Two Contradictory Wills

##### **Article 206:**



If there are two wills contrary to each other, the last [most recent] will shall be valid, but if the date of both or one of the wills is unknown, the applicable will shall be selected by drawing lots.

### Determining 1/3 of the Original Assets of the Estate and Payment of the Sharia-specified Duties from the Original Assets

#### **Article 207:**

(1). One third of the bequest shall be determined from the actual estate of the deceased, keeping in mind, the time of the death of the testator, and after paying debts, religious obligations, burial expense, maintaining of the estate, fee of the executor and other anticipated expenses in this law.

(2). If the will specifies completion of religious duties such as a fifth (*kham*s), religious tax, hajj expense or payment of a debt and so forth, those expenses shall come from the actual or original estate even if that [those expenses] includes the entire estate, unless the testator has specified one third of his/her estate [for this purpose]. If the will cannot be covered from one third, then the remaining portion shall be paid from the actual estate.

### Proving the Will

#### **Article 208:**

(1). The will shall be proven through the following:

1. Confession of the interested people and heirs.
2. Testimony of two righteous men or one righteous man and two righteous women or one righteous man together with the beneficiary's oath regarding ownership will.
3. Existence of a reliable handwritten will with the signature of the testator.

(2). The entire property of the ownership will shall be proved by testimony of four righteous women; half of the property of the ownership will shall be proved by the testimony of two righteous women; and a quarter of the ownership will shall be proved by the testimony a woman; but a committed (*Ahdi*) will shall only be proved by the testimony of two righteous men.

(3). If some of the heirs and interested persons confess to a will, the will shall only be executed as to their share, providing that they meet the requirement for proving the will.

## **CHAPTER TWO: INHERITANCE**

### Definition of Inheritance and Estate

#### **Article 209:**

(1). The deceased persons' estate shall be transferred to his/her relatives in accordance with the provisions of this law.





(2). Estate is property or transferable objects and financial rights that could be transferred after natural or legal death of a person, and includes the right of rescission, right of pre-emption as well as well as debts and commitments.

(3). The estate is considered a legal person before payment of debts, execution of deceased person's commitments, and distribution of the heirs' portions.

### Grounds for Inheritance

#### **Article 210:**

(1). The grounds for inheritance are as following:

1. Genealogical relationship between the deceased and his/her relatives.
2. Marital relationship between the deceased and others.
3. *Wala* (Relation between slave and his/her master).

(2). In case of existence of several grounds for inheritance, the heirs shall be given priority in accordance with the provisions of this law.

### Loans, Rights and Obligations

#### **Article 211:**

(1). The heirs cannot conduct any transaction with regard to the estate prior to the payment of the deceased person's loans and financial rights deriving from the estate, unless a proportion of the estate remains unclaimed. In this case, the additional parts of the estates can be used.

(2). The creditor's debts, Hajj expenses, *Khoms* [charity given to religious clergy], and *Zakah* [alms] shall be paid from the deceased person's estate. If the portion dedicated to Hajj is not sufficient, it shall be deducted from other financial duties. If the creditors' portion is insufficient for the payment of the entire debt, the above-mentioned portion shall be deducted from each creditor's portion proportional to their respective debts.

(3). The privileges given by the government or insurance companies to the deceased person's successors after his/her death shall be considered part of the estate, unless the contract states otherwise.

(4). The deceased person's debts shall be considered due after his/her death.

(5). Transfer of the estate is deemed compulsory, refusal or any agreement to not transfer is null and void.

(6). If the deceased person does not have heirs, the court assigns a judicial executor if deemed necessary.

(7). The creditor of the deceased person and other persons of interest can demand their [payment of] debts and portions from the executor or heirs, and or judicial executor.

### Requirements for the Inheritance

#### **Article 212:**

(1). Requirements for Inheritance are as following:



1. Natural or legal (*hukmi*) death of the decedent
  2. The heir must be alive
  3. Existence of estate
- (2). A fetus shall be considered an heir, provided that he/she is born alive.
- (3). If a deceased person's sperm is combined with a woman's egg after his/her death, the child who is born as a result, is not entitled to inheritance.
- (4). If after dividing of the estate, the woman [heir] appears pregnant, the fetus' portion [of the inheritance] shall be restored from the rest of the heirs' portions in accordance to the provisions of this law.
- (5). If the fetus disinherits other relatives from the deceased person's estate, in such instance if the executor is not appointed by the deceased until the fetus is born, the court assigns a trustee for the estate. If the fetus disinherits some of the heirs [not all] the portions of other inheritors who will not be disinherited shall be given.
- (6). If the fetus does not disinherit the heirs, his/her portion shall be separated based on its [fetus] sex and number. If the determination of the sex and number is impossible, the fetus' portion shall be separated equally in proportion to two male children from the estate.
- (7). If the portion allocated to the fetus is less than what the fetus is entitled, its deficiency is recovered from the portions of the remaining heirs. If the allocated portion is more than what the fetus deserves [i.e., female or twins] or if the fetus was born dead, or if the fetus' death cannot be determined, in this case the estate shall be distributed proportionally to each heir's portion.
- (8). If two or more persons die, burn, drown or are torn by animals, and/or if a building collapses upon them at the same time, they do not receive inheritance from each other; rather, their heirs receive inheritance from them.
- (9). If the time of the death of persons who are inheriting from each other is unknown, or the date of their death is doubtful, in this case they do not inherit from each other, unless they die as a result of drowning or the falling of a building upon them. Presuming that one person was deceased prior to the other, he/she inherits from the other. However, the inheritance proportion arising from the presumed death of each of the persons is not inheritable to each other.
- (10). If a person is considered dead because of mistake of experts or relatives or a court order, and his/ her property is distributed, and later it appears that he/she is alive, any acts done to his/her property and financial rights shall be considered invalid. The distributed estate shall be returned in its original form. In case of damage, the same object or one similar to it with the same value shall be returned and if the asset [animal] is disabled/injured the person shall be compensated for the damage according to the provisions of this law.
- (11). If a hermaphrodite person's sexuality is medically proved to be male or female, his/her portion of inheritance shall be specified according to the provisions of this law. Otherwise his/her sexuality shall be determined by Islamic jurisprudential evidence.

(12). If the sexuality of the person is unknown and there is no way to distinguish [whether the person is male or female], then the person is entitled to half of the share of a male or a female relative who is of the same rank. However, if the sexuality of the person is impossible to know or if the person's sexual organs are completely mutilated by drowning, burning or other incidents, the person's sexuality should be specified through drawing lots.

#### Estate Without Heir

##### **Article 213:**

The estate of a deceased person who does not have heirs will be used under the supervision of a spiritual leader after payment of his loans and dues.

#### Hajb (Disinheritance)

##### **Article 214:**

Disinheritance means when some relatives deprive other relatives from inheritance either completely (which is called *Hajb Hirmani*), or partially (which is called *Hajb Noqsani*).

#### Hajeb Hirmani [the person who can cause complete disinheritance to others]

##### **Article 215:**

The foremost degree in any class deprives [of inheritance] the later degree of the same class and the following classes. The following are excluded from this provision:

1. First class [category]: the children of children from the second degree and below, substitute their parents, and shall receive their share of the inheritance even if the parents of the deceased person are alive. And foremost degrees of descendants deprive the later degrees of the children from inheritance.
2. Second class [category]: the children of the deceased's brother and of the deceased's sister and below replace their mother and father and shall receive their portion of inheritance even if the grandparents of the deceased are alive, and the foremost degrees of the children of a brother and a sister deprive the later degrees from inheritance.
3. Third class [category]: The father and mother of the ancestors replace the ancestors.
4. Fourth class [category]: The children of uncles (father's brother and mother's brother) replace them [the uncles].
5. Fifth class [category]: The son of an [who is related to both the father and the mother of father] deprives the paternal uncle from inheritance, provided that the deceased person has only two heirs [the abovementioned relatives]. If the paternal uncle and the paternal and the maternal cousins are more than one [person], or the husband or the wife of the deceased is alive, a negotiation shall take place between the uncle and the cousin.

#### Hajeb Noqsani (Partial Disinheritor)

##### **Article 216:**

A partial disinheritor is:

1. Children or the descendants of the children of the deceased [partially] exclude the parents of the deceased from [their entitlement] of two thirds and one thirds respectively to one sixth each.
2. Children or the descendants of the children of the deceased [partially] exclude the husband of the deceased from one half [of his entitlement] to one fourth, and the wife of the deceased will be excluded [partially] from one fourth [of her entitlement] to one eighth.
3. Two brothers or one brother with two sisters, or four full sisters or four paternal sisters of the deceased who are Muslims and are born [not a fetus], and their father is alive and they are not disinherited, will cause the reduction of the deceased's mother's share from one third [of her entitlement] to one sixth. The remaining estate shall not be distributed to the mother of the deceased. For example, if the deceased has a daughter in addition to his/her parents, each parent shall get one sixth and the daughter shall get half [of the estate], and the remainder of the estate shall be redistributed, one fourth to the father and one fourth to the daughter.

### Heirs Based on Genealogy

#### **Article 217:**

Classification of heirs by parentage is as follows:

1. First class [category]: father and mother, children and children's children and their descendants [of the deceased].
2. Second class [category]: grandfather and grandmother and above, brother and sister of the deceased and their children and their descendants.
3. Third class [category]: uncles (father's brothers), aunts (father's sisters), uncles (mother's brothers) and aunts (mother's sisters), and uncles and aunts [paternal and maternal] of the parents and ancestors of the deceased and their children.

### Inheritance Based on *Farz* (fixed share) and on Relationship

#### **Article 218:**

(1). Inheritance of some heirs is either determined by fixed share or by relationship, and inheritance of some heirs is sometimes determined by relationship, and sometimes by fixed share.

(2). *Farz* or fixed share is a specified proportion of the estate such as half, one third, one fourth, one eighth, two third and one sixth as determined by the Quran.

### Inheritance Based on Fixed Share

#### **Article 219:**

Inheritance share of those entitled to fixed share is as follows:



1. ***Mother*** is entitled to one third of the estate if the deceased has no children, and if there is no disinheritor, and if the deceased has children the mother is entitled to one sixth. If after the distribution, based on fixed share, if there is any estate remaining, then the remaining [estate] shall be redistributed.
2. ***Wife*** is entitled to one fourth if the deceased has no children, and one eighth if he [deceased] has children.
3. ***Husband*** is entitled to one half if the deceased has no children, and one fourth if the deceased has children. And if the deceased has no other heirs, except the Imam (spiritual leader), the remaining shall be given to the husband.
4. ***Maternal grandparents***, whether together or alone, are entitled to one third of the estate and the maternal brothers and sisters are entitled to one sixth [if only one sister or one brother], and one third if there are more than one.
5. ***Maternal uncles*** and their children are entitled to one third of the estate whether they are alone or more than one.

#### Inheritors by Fixed Share and by Relationship

##### **Article 220:**

The following persons sometimes inherit by relationship and sometimes by fixed share:

1. Father of the deceased, if the deceased has no children left behind, father shall inherit by relationship, otherwise he shall inherit one sixth of the estate by fixed share.
2. Daughter of the deceased, if she is the only heir she will receive one half [of the estate] by fixed share, and if there is a male child, she will inherit by relationship.
3. Two or more daughters, if they are the only heirs, they will receive two thirds by fixed share, and if there are male children with them they will inherit by relationship.
4. A full sister or a paternal sister who is the only inheritor will receive one half [of the estate] by fixed share, and if she is with a full or paternal brother [and no sister] she will inherit by relationship.
5. Two or more full sisters, if they are the only heirs, they will receive two thirds by fixed share, and if they have full brother(s) or paternal brother(s), they [the sisters] shall inherit by relationship.
6. Maternal sisters and brothers in the absence of grandfather shall inherit one third by fixed share, and in if there is a grandfather shall inherit by relationship, and the estate shall be distributed among them equally.

#### Inheritance by Relationship

##### **Article 221:**

Relatives who always inherit by a relationship are as follows:

1. Male children in the first class.



2. Paternal grandfather and grandmother and above, also full brothers, and their children and below in the second class.
3. Paternal and maternal uncles and aunts, paternal uncles and aunts and maternal uncles and aunts and their children and below.

Inheritance of the First Class [category]

**Article 222:**

(1). Parents and children of the deceased from the first class are first degree, and children of the children and downward are the second class; likewise every descending class is considered one degree.

(2). If heirs of the deceased from the first class are confined to the father and mother, mother shall inherit one third of the fixed share, and in the existence of a disinheritor, shall receive one sixth, and the rest shall go to the father.

(3). If heirs of the deceased from the first class are only the parents, they[parents] shall inherit the entire estate based on their relationship, and the mother shall receive one third, and in the existence of a disinheritor the mother shall receive one sixth by fixed share and shall inherit the rest accordingly [redistribution].

(4). If heirs of the deceased from the first class are the parents and the surviving spouse, the surviving husband shall inherit one half, the surviving wife one fourth and the mother, if an disinheritor does not exist, one third, and if an disinheritor exists, the mother shall inherit one sixth, and the rest shall go to the father based on relationship.

(5). If the heirs of the deceased from the first class are confined to children, and there are one or more sons, the estate shall be distributed equally among them according to their relationship.

(6). If heirs of the deceased from the first class are confined to children, and there is [only] one daughter, she shall receive half of the estate by fixed share, and the rest will be given to her accordingly to *rad* [by redistribution].

(7). If heirs of the deceased from the first class are confined to children, or there are two or more daughters, they will receive two thirds, divided equally, by fixed share, and the rest [of the estate] shall be distributed to them equally according to their relationship.

(8). If heirs of the deceased from the first class are confined to children, male and female, the entire estate shall be distributed among them based on the principal of one man equals two women.

(9). If heirs of the deceased from the first class are confined to children, children of children and below each generation will receive the share of the person through whom they are related to the deceased, and if they are male and female the estate shall be distributed [among them] based on the principal of one man equals two women, and each following generation will be deprived [of the inheritance] by the prior generation.



(10). If heirs of the deceased from the first class are father, mother and one daughter, one sixth of the estate shall go to the father or the mother by fixed share, and one half shall go to the daughter by fixed share, and one fourth of the remaining estate shall go to the father or mother if there is no disinheritor, and three fourths will go to the daughter based on redistribution.

(11). If heirs of the deceased from the first class are mother and father with [only] one daughter, parents are entitled to two sixths of the estate equally, and one half shall go to the daughter by fixed share, and one fifth of the rest shall go to the father, and one fifth to the mother; and if there is no disinheritor three fifths shall go to the daughter.

(12). If heirs of the deceased from the first class are mother and father with more daughters, two sixths of the estate shall be given to the parents equally, and two thirds shall be given to daughters by fixed share.

(13). If heirs of the deceased from the first class are mother and father or one of them with one son or more than one son, or at least one son and one daughter, each of the parents receives one sixth of the estate, and the remaining estate shall be distributed among the children of the deceased based on the principal of one man equals two women.

(14). If heirs of the deceased from the first class are parents, children and husband or wife, husband receives one fourth by fixed share, and wife receives one eighth by fixed share. Each parent shall receive one sixth by fixed share, and if there is only one daughter she [the daughter] receives half [of the estate], and if there is more than one daughter they receive two third of the estate, and if there are one daughter and one son the remainder of the estate shall be distributed among them based on the principal of one man equals two women.

#### Share of Inheritance that Exceeds the Estate

##### **Article 223:**

If the inheritance by fixed share (*Saheban-e-Farz* or the inheritors who are entitled to fixed share) is more than the estate of the deceased, the amount of deficit shall be recovered from the share of the daughter or daughters [for example:]

1. In presence of husband with father or mother and two or more daughters, or their children (one fourth + one sixth + two thirds = thirteen twelfths).
2. In presence of parents and husband and one daughter or her children (two sixths + one fourth + one half = thirteen twelfths).
3. In presence of wife and parents and two or more daughters or their children (one eighth + two sixths + two thirds = twenty seven twenty fourths).
4. In presence of parents and husband and two or more daughters (two sixths + one fourth + two thirds = fifteen twelfths).

#### Inheritance of the Second Class [category]

##### **Article 224:**

(1). Grandfather, grandmother, brother and sister of the deceased from the second category are first degree, and parents of the grandfather and grandmother and brother and sister



progeny are second degree, any ascending generation in ancestors and descending generation in sister and brother, are to be counted at the same degree.

(2). Paternal brothers and sisters, including brothers and sisters [from the same parents], and paternal sister and brother progeny including brothers and sisters [from the same parents], are deprived of inheritance.

(3). If the heirs of the deceased are the maternal grandfather and grandmother, and or any one of them, they shall get one third of the estate by *farz*, and the remaining will be redistributed to them equally.

(4). If the heirs of the deceased are the paternal grandfather and grandmother, and or any one of them, they receive the whole estate by relationship, and in case there are more than one, they will receive according to the principle of one man equals two women.

(5). If the heirs of the deceased are paternal grandfather and grandmother and sister of the same parents, or paternal sister and maternal grandfather and grandmother, one third of the estate is given to the maternal grandfather and grandmother equally based on *farz*, and the remainder is divided to paternal grandfather and grandmother by relationship and the paternal sister of the same parents or paternal sister may inherit according to principle of one man equals two women.

(6). If the heirs of the deceased are paternal grandfather and grandmother, and paternal brother and sister of the same parents, or paternal or one maternal brother or sister, one sixth of the estate is given to the maternal brother or sister by *farz* and the remainder is divided among the other heirs according to the principle that one man equals two women.

(7). If the heirs of the deceased are maternal grandfather, grandmother, sister and brother, and one sister of the same parents, one third of the estate is given to the maternal relatives by *farz*, and half of the estate is given to the sister of the same parents or paternal sister by *farz*, and the remainder is redistributed to the sister from the same father or from the same parents.

(8). If the heirs of the deceased are one or more brothers of the same parents, and or one or more paternal brothers, and or, one or more maternal brothers, they will receive the entire estate equally according to relationship.

(9). If the heirs of the deceased are one sister of the same parents and or one paternal sister, and or one maternal sister, they will receive one half of the estate by *farz*, but if there are more than one sisters of the same parents and or more than one paternal sister, and or more maternal sisters, they shall receive two thirds of the estate by *farz* and the remainder will be redistributed to them.

(10). If the heirs of the deceased are one or more brothers and sisters of the same parents, and or one or more paternal brothers and sisters, and or one or more maternal brothers and sisters, the two first categories shall receive the whole estate according to the principle that one man equals two women; and the third category (maternal brothers and sisters) shall inherit equally.

(11). If the heirs of the deceased are one brother and sister of the same parents or paternal brother and sister, and or one maternal brother and sister, one third of the estate shall be



divided equally between the maternal brother and sister, and two thirds of the estate shall be given to brother and sister from the same parents or the paternal brother and sister.

(12). If the heirs of the deceased are two or more brothers and sisters from the same parents or two or more paternal sisters and brothers, or two or more maternal brothers or sisters, one third of the estate shall be given to the maternal brother and sister equally by *farz*, and two thirds of the estate shall be divided between the brother and sisters from the same parents, or the paternal brother and sister according to the principle one man equals two women.

(13). If the heirs of the deceased are a wife and two or more sisters and brothers of the same parents, and a maternal brother and sister, one fourth of the estate shall be given to the wife by *farz*, and one third shall be given to the maternal brother and sister, and the remainder [2/3] shall be given to the brother and sister of the same parents.

(14). If the heirs of the deceased are a husband and two or more sisters of the same parents or paternal sister(s), and two or more maternal brothers and sisters, one half of the estate is given to the husband by *farz*, one third to maternal brothers and sisters by *farz*, and the remainder of the estate instead of two thirds, shall be given to brothers and sisters of the same parents or paternal brothers and sisters by *farz*.

(15). If the deceased does not have any brothers and sisters, their children take in their place considering that the degree in each generation deprives the more distant degree in each generation of inheritance. Also if the deceased does not have a grandfather and grandmother, the grandfather and grandmother of the parents shall substitute for them.

(16). If the existence of a husband and a wife among the heirs of the second category of the relationship causes a deficiency in the estate, then the amount of the deficiency is recovered from the portion given to the brothers and sister of the same parents or the paternal brothers and sister, or the paternal grandfather.

### Share of Inheritance of the Third Category of the Relatives

#### **Article 225:**

(1). If the heir of the deceased is in the third category of relationship to the deceased, the inheritance is given to the father's brothers and sisters and the mother's brothers and sisters. In their absence, the inheritance is given to their children in descending order. In the absence of their children in descending order, the inheritance is given to the deceased parents' father's brothers and sisters. In their absence, the inheritance is given to their children in descending order, and then to the deceased's next generation uncles and aunts (from both father's and mother's side) and their children.

(2). Paternal and maternal uncles in the existence of uncles of the same parents, and the children of paternal uncles in the existence of the children of uncles of the same parents in consideration of the degree of relationship do not inherit.

(3). When the heir of the deceased is one uncle or one aunt, and or one uncle and one aunt together, and or several uncles and several aunts, all of whom are either from the same

parents or paternal or maternal, the entire inheritance is given to them in consideration of their degree of relationship.

(4). When the heirs of the deceased are uncles of the same parents or paternal uncles, one sixth of the inheritance is given to the maternal uncle if there is just one, and one third is given to maternal uncles equally, in case there is more than one. The remaining portion is given to uncles of the same parents or paternal uncle according to the principle of one man equals two women.

(5). Children of paternal uncles and maternal aunts may receive a portion of the inheritance according to their degree of relationship to the deceased.

(6). When the heir of the deceased is one uncle (mother's brother) or one aunt (mother's sister) or together maternal uncle and aunt, or several maternal uncles and aunts, one third of the inheritance is given to them by *farz*, and the remainder is redistributed equally between males and females.

(7). When the heir of the deceased is one maternal uncle or uncle of the same parents, or aunt of the same parents, or paternal sister, and or maternal uncles and aunts, the maternal uncle and aunt shall receive one sixth of the inheritance if there is only one. If there are more than one, they receive one third of the inheritance in equal portions, and the remainder is given to the uncle [mother's brother] or aunt [mother's sister] of the same parents or paternal uncle and aunt in equal portions.

(8). When the heir of the deceased is one uncle (mother's brother) or one aunt (mother's sister) along with one uncle (father's brother), or one aunt (father's sister), even if they are from the same parents or paternal or maternal, one third of the inheritance is given to the mother's brother and sister by *farz*, and the remainder is given to the father's brother or sister in consideration of the degree of relationship.

(9). When the heir of the deceased is the uncle [father's brother] and aunt [father's sister] of the same parents, or paternal uncle and aunt or a maternal uncle and aunt and or one uncle (mother's brother) and one aunt (mother's sister), one third of the inheritance is given to the mother's brother and sister by *farz*, and the remaining is given to the father's brother and sister in consideration of the degree of relationship, even if they are of the same parents or paternal or maternal uncle and aunt.

(10). When the heirs of the deceased are an uncle (mother's brother) and aunt (mother's sister), from the same father, or uncle and aunt of the same parents, maternal uncle and aunt and if there is one uncle [father's brother] and aunt [father's sister], one third shall be given to the mother's brother and sister equally, and remainder is given equally to the father's brother and sister in consideration of the degree of relationship, even if they are of the same parents or they are paternal or maternal uncles and aunts.

(11). When the heirs of the deceased are uncles (father's brother and mother's brother of the deceased's parents), or the uncles (father's brother and mother's brother of grandparents), or their children, one third of the inheritance is given to the mother's uncles and aunts and their

children by *farz*, and the remainder is given to the father's uncles and aunts or the father's parents or their children in consideration of the degree of relationship.

(12). From the total share of the deceased mother's uncles and aunts or the deceased mother's parents or their children, one third is given to the aunts or their children, and the remainder is given to the uncles or their children.

(13). From the total share of uncles (father's brothers), one sixth of the inheritance is given to the maternal uncles if there is only one uncle, but in case there is more than one, one third of the inheritance is given to both males and females equally, and the remainder share of the children of the same parents or paternal uncles is given to males and females equally.

(14). From the total share of paternal uncles (deceased father's brothers) and aunts (deceased mother's sisters), and deceased father's parents and their children, one third of the inheritance is the share of aunts and their children.

(15). From the total share of father's uncles (father's mother's brothers) and father's parents of the deceased, one sixth, if there is only one uncle, and one third if there is more than one, are given to maternal aunts, and the remainder will be given to uncles of the same parents equally.

#### Causal (Relatives by Marriage) Heirs

##### **Article 226:**

(1). A married couple, based on the marital relationship and according to the provisions of this law, has the right to inherit from all levels and degrees of each level during the period of the permanent marriage contract.

(2). The wife and husband in a marriage inherit from each other during the *edat* of revocable divorce.

(3). If the permanent marriage is established at a time when the husband is ill, and the same illness causes his death, or if the wife dies during the same period, and no sexual penetration has occurred, they do not inherit from each other and the wife is not entitled to *Mahr*, however if sexual penetration has occurred then the wife inherits from her husband and also is entitled to *Mahr*.

(4). When a husband divorces his wife while he is sick and he dies from that sickness, if the death of the husband occurs before the expiration of one year from the divorce date (revocable or irrevocable), and the wife has not remarried, she inherits from the husband. However, if the death of the husband occurs one minute after the expiration of one year from the divorce, the wife does not inherit. But, if the wife has requested the divorce and the divorce is *Khola*, and or if the divorce is with the consent of both parties, and or the wife remarries, then the wife and the heir negotiate about the amount of inheritance.

(5). If an ill husband divorces his wife and the wife dies during the revocable divorce period, then the husband inherits from the wife. If the wife [dies while she] is not in the *edat* of a revocable divorce, the husband does not inherit from the wife.

(6). The husband inherits half of the share of a childless wife, and the wife inherits one fourth of the share of a childless husband. If there is no other heir except for the *imam* [religious clergy], the husband inherits half of the inheritance of the fixed share of an heir, and the other half of the inheritance is redistributed, and the wife inherits one fourth of the current share. The remainder is given to the *imam* and may be spent by *Mujtahed*.

(7). The husband inherits from all moveable and immovable assets of his wife; however, the wife inherits from the moveable assets of her husband, and she does not inherit from the land and its proceeds, whether it is empty land [undeveloped], or land with buildings or trees on it or if it is used for agriculture [developed]; however, she inherits from the buildings, trees and other fixed assets on the land, and the heir of the husband can give the value of her portion to her.

(8). The wife inherits from the actual water of wells and other irrigation systems.

### Barriers to Inheritance

#### **Article 227:**

Barriers to inheritance mean a quality in an heir that causes him or her to be deprived from inheriting, despite the existence of the inheritance components (genealogy or marital relationship).

### Consequence of Murder in Inheritance

#### **Article 228:**

(1). Murder bars the murderer from inheriting from the murdered person provided that:

1. The murder is deliberate when a person orders an insane or minor child to murder someone; however if a person induces a sane and free [not under duress] person, the one who gives the order is not considered the murderer. In an unintentional homicide, the murderer inherits except from the *dia* (blood money or compensation to victim), but the *dia* must be negotiated between the heir and the murderer.
2. The murderer must not be a minor, under seven years of age, or insane.
3. The murder must not be in accordance with provision of Sharia, or for self defense or defense of property, or honor.

(2). The murderer does not become an disinheritor; for instance, if someone kills his/her father, and there is no other heir, the son of the murderer inherits from his grandfather's inheritance.

(3). If a mother aborts her fetus, she must pay its *dia*, according to the provisions of Sharia, to the heir of the fetus and she does not have any right to *dia* either; if the father makes her abort, then the *dia* goes to the mother.

(4). Direct or indirect (hiring another person to commit the murder) murder, whether individual or collective, is a barrier to inheritance.



## Consequences of Blasphemy in Inheritance

### **Article 229:**

- (1). A Muslim inherits from a non-Muslim; and in the instance of a Muslim heir a non-Muslim does not inherit from a non-Muslim. However, if there is no Muslim heir, then the non-Muslim can inherit from another non-Muslim.
- (2). Relatives of a non-Muslim whether *Mortad* ( by birth) or *Meli* [a person whose parents were not Muslims during his/her birth and after becoming an adult accepted the Islamic faith and subsequently became a non-Muslim], shall not inherit from a Muslim unless they become Muslim before distribution of the inheritance; however, if they become Muslim during or after the inheritance is distributed, they do not inherit. If the heir is a non-Muslim, and even if he/she becomes Muslim after the death of the decedent he/she does not inherit; however, the wife can inherit if she becomes a Muslim after the death of her husband, and she inherits one fourth of the estate provided that there is no heir except for the *imam*.
- (3). An illegitimate child and his/her adulterous father and relatives do not inherit from each other. An illegitimate child and his wife and their children do inherit from each other.
- (4). Sworn maledictions which result in negation of parentage according to the provision of this law, bars inheritance between the child and father, and his/her relatives through the father, if the father confesses his/her affiliations after the sworn malediction, he/she inherits from the father. Between the mother and the same son/daughter and between the son/daughter and his/her relatives through the mother, inheritance is valid.
- (5). Between children born under false claim of adultery and their parents, inheritance is valid.
- (6). Between children born as a result of artificial insemination and owners of the semen inheritance is valid.

## Inheritance Based on the Principle of *Lezakar Masal Hazul'esneen*(one man equals two women)

### **Article 230:**

The following heirs deserve inheritance based on the above principle:

1. First level, the children of the deceased and their children as the generation continues downwards.
2. If father and mother are the only heirs. If the deceased has no children, his father receives two thirds, and his mother in case of lack of excluder takes one third.
3. Second level, father's forefathers and brothers and sisters related through parents and father and their children as the generation continues downwards.

## Equality of Inheritance

### **Article 231:**

The following heirs inherit equally whether they are male or female:



1. Father and mother of the deceased receive one sixth each.
2. Second level, forefathers and maternal brothers and sisters and their children as the generation continues downwards.
3. Third level, uncles and aunts related through the mother and their children as the generation continues downwards.

## Redistribution of Remainder of Estate

### **Article 232:**

In cases where the inheritance is more than the fixed shares of the heirs, the extra portion is redistributed proportional to the fixed portion of each, except for the wife and the husband provided that there are genealogical heirs and the mother has a disinheritor.

## Representation in Inheritance

### **Article 233:**

Those heirs that inherit because of representation must be eligible as follows:

1. The representing heir must be closest to the deceased so that he/she is the closest generation without intermediation to the deceased.
2. The representing heir must not be deprived of the inheritance.
3. A person from the generation of the deceased without an intermediation to the deceased.
4. The generation which inherits because of his representation must not be deprived of the inheritance. If the deceased child is a non-Muslim, his Muslim son can inherit from his grandfather.
5. The generation which inherits from his representation must not have died before the deceased.

## The Deceased's *Dia*

### **Article 234:**

(1). *Dia* of the deceased, no matter for what reason, is the same as the inheritance of the deceased which is given to the heirs after the debt is paid, and will is prepared; however, relatives through the mother such as brothers and sisters, aunts and uncles and maternal forefathers of the deceased do not inherit from *dia*.

(2). If the person who is murdered does not have any heir except for the *imam*, the deputy *imam* has the right to ask for the retaliation or take *dia* if the murderer agrees. If the murderer does not agree to pay the *dia*, the deputy *imam* has only the right to retaliate.

(3). If a crime or violation occurs to a deceased's corpse after his/her death, the *dia* for this crime is not given to the heirs, but is used to pay the deceased's debts or will be used for charitable activities on behalf of the deceased.

## Personal Items to the Eldest Son

### **Article 235:**

The deceased's clothing, ring, Quran and sword are given to his eldest son, and other heirs do not have any right to them, only if the deceased's debt is equal to the inheritance, or the deceased has left instructions for those items. If the deceased has left instructions regarding one third of the inheritance, one third of the estate (including the personal items to the eldest son) are excluded. If instead of a sword there are one or two guns, distribution of those items

must be negotiated between the eldest son and the rest of the heirs. If there are two eldest sons [if two wives give birth at the same], the personal items are shared between them; eldest means the one who has been born first, not the one who had been conceived first.



## Liability in Inheritance (based on friendship)

### **Article 236:**

In liability of an inheritance, the guarantor of the payment of *dia* takes precedence over the *imam*. If a person promises someone else to pay the *dia* of all crimes [the other person commits] and in return will inherit after his death, the commitment is valid, and the guarantor is his legal heir; but this agreement is valid only if the deceased does not have any other heir. If the guarantor is the husband or the wife of the deceased, he or she will be entitled to the maximum share which means the husband will receive one half and the wife will receive one fourth of the inheritance.

## Distribution of Inheritance of a Missing Person

### **Article 237:**

If research is conducted for four years to find a missing person, and his being alive is not clarified, the heir can distribute his inheritance based on the provisions of this; if the person is missing for ten years, the heir can divide his inheritance without doing any research.

## **CHAPTER THREE: ENDOWMENTS AND PROFITS THEREFORM**

### Definition of Endowment

#### **Article 238:**

Endowment is defined as a corpus of property and the positive use of its profits under the management of a designated legal representative.

### Elements of Endowment

#### **Article 239:**

The elements of Endowment consist of the following:

1. Endower: a person who endows his property.
2. Recipient: a person who is the beneficiary of the profits from the management of the endower's property.
3. Substance of endowment: the property which is endowed.
4. Trustee of the Endowment: a person or institution which has the legal authority to manage the endowment.

### Types of Receivers of Endowment

#### **Article 240:**

Recipients of endowment are of two types:

1. Public Endowment: property dedicated for the public welfare such as schools or those who are not prohibited from receiving endowment, such as students.
2. Private Endowment: property dedicated to the welfare for particular causes or individuals, such as children.



## Conditions of Endowment

### **Article 241:**

- (1). Endowment is an absolute offer, by word or action, which indicates the intention of the endower and receiving of endowment by the first degree of recipients, or their guardians before the death of the owner or his/her withdrawal of the offer. However, if endowment is conditional on anything even if the item has been received it is invalid, unless the validity of the endowment is dependent on the condition.
- (2). Public endowment is accepted by *Marja Taqleed* of Shias in Afghanistan, or the representative of that authority, or the executor; a private endowment is accepted by the receivers of the endowment. Moreover, if the endowment is used for public purposes, only using the item in a public way is sufficient to be considered accepted, such as praying in the mosque and burial in the cemetery.
- (3). Lack of acceptance or rejection of the endowment by an earlier generation does not deprive the latter generation from the endowment.
- (4). The endower must be the owner of the endowed property and must have the competency to financially manage the property. A male child who is at least ten years of age can make a will with an endowment of property.
- (5). The identity of the recipient of an endowment must be known, and in private endowment the recipient must be alive, however, the dependents of the recipient are exceptions to this condition. For example if the endower says “I give this land to my children and thereafter to their children.”
- (6). Endowment during pregnancy to an unknown and unborn child is invalid.

## Conditions of Property of Endowment

### **Article 242:**

- (1). A property eligible for endowment should meet the following conditions:
  1. It should be the actual property [not its value]; endowment of a debt or an unspecified endowment such as a shop or the profits from anything is invalid.
  2. Profiting from endowment or the continued existence of the actual endowment should be possible and legal. Thus, if taking benefits from the actual property is not possible without destroying it, and or profiting from the actual property is illegal in Islam, then the endowment is invalid.
  3. The endowed property must be owned by the endower.
  4. Withdrawal and release of the property must be possible in the future.
  5. The purpose of the endowment must be legal; therefore, an endowment for illegal purpose is invalid.
- (2). Anything that according to customs and tradition is considered part or a component of the endowment shall be included in the endowed property.
- (3). The trustee, who manages the endowment, and the purpose of the endower must be legal.

(4). The endower can set a precondition so that if the endowed property is needed by the endower later, it must be returned to him/her. A condition which is contrary to the requirements of the contract or a condition which is illegal invalidates the endowment.

### Managing the Endowment

#### **Article 243:**

- (1). The endowment is a legal person and the trustee is its lawful representative.
- (2). The endower can individually or jointly appoint himself or someone else as his/her trustee to manage the endowment.
- (3). The endowment trustee has the competency to manage the property and its financial benefits, and can resign from being a trustee after he has accepted the responsibility.
- (4). If the endower does not appoint a trustee in a private endowment, the recipient of the endowment has the position of trustee; but if they disagree on the management of the endowment, then representative of the Shiite *Marja Taqleed*, can appoint a receiver or a third person as a trustee.
- (5). If the endower in a public endowment or private endowment has not appointed a trustee, not because of cost but because of giving possession, the Shiite *Marja Taqleed* or his deputy will assign a trustee.
- (6). The endower or the Shiite *Marja Taqleed* cannot remove the trustee once he is assigned, but may do so only according to the terms and conditions of the endowment contract.
- (7). The supervisor and trustee are trustworthy, but they are not the guarantors of anything except that arising from their misuse or waste. If the supervisor and/or trustee are due a fee according to the endowment, they can withdraw an amount equal to the fee from the profits of the endowed property with authorization from the court; but if the contract shows that the endower has intended the trustee to serve without remuneration, there is no fee.
- (8). The trustee cannot transfer his position to someone else during his/her life or after his/her death; except if he has such permission from the endower.
- (9). If the trustee's supervision is not provided for in the contract of the endowment, the trustee can hire a representative to manage the endowment.
- (10). An endowment made for an unknown use may be used for reasonable purposes, either according to the endower or based on the opinion of the Shiite *Marja Taqleed*.
- (11). Extra income from endowment will be spent in consultation with the endower to the extent possible, or based on the opinion of the Shiite *Marja Taqleed*.

### Duties of the Endowment's Trustee

#### **Article 244:**

The duties of the endowment's trustee are:

1. Registration of the endowed property in governmental centers as soon as possible.



2. Maintenance and positive management of profits from the endowed property.
3. Payment of taxes and other government requirements and supervision fee if they are entitled to it.
4. Filing a legal case against those who have illegally occupied or misused the endowment.
5. Maintenance of the endowed property from destruction, spoilage, breaking, as well as, its repair and refurbishment as necessary.
6. Spending of the endowment's profits based on the endowment contract.

### Trustee and Supervision Fees

#### **Article 245:**

(1). The fees of trustee and supervisor and other necessary costs of the endowment take priority over the charges of the person given the endowment, unless the endower has stated otherwise. If the endowed property is about to be wasted and may not remain for future generations, then it is obligatory to rehabilitate it even if the current generation is deprived of its profits.

(2). If the endowment is not capable of generating profits, the trustee can give it on lease and can use its profit to the intended purposes. But if lease is not possible, the trustee can sell part of the endowment and use the profits on the remaining part to build its capacity, in order to make profit. Otherwise, he can exchange it for another property on which profit is possible. If exchange is not possible, he can sell the endowment and direct the profits of the sale to the purpose for which the endowment was dedicated.

(3). The fee for trustee and supervisor is paid in accordance with the terms of the endowment contract. If no allocation is made in the contract, the trustee is paid a reasonable amount for his/her work.

### Removal of Supervisor and Trustee

#### **Article 246:**

(1). The supervisor and trustee are removed for the following reasons:

1. Lack of qualification mentioned for each of them;
2. Proof of betrayal;
3. Lack of capacity to manage the endowment;
4. Resignation;
5. Proof of violation, waste or negligence in performance.

(2). If based on sections (1, 2 and 3) of this article's section (1) another person is assigned by the Shiite *Mujtahed* (to work with them); the trustee and supervisor assigned by the endower will not be removed.

(3). If a mosque is destroyed, its premises will not be changed from being a mosque and will stay a mosque forever, but if the benefit considered for the ones this mosque has been

endowed for vanishes, and there is no use as a mosque anymore, the endowment is declared invalid and it returns to the possession of its owner or his heir.

#### Termination of Endowment

##### **Article 247:**

Endowment is terminated as soon as its legal existence or its endowed property vanishes.

#### Complete Use of Profits

##### **Article 248:**

- (1). The right to receive benefits is an agreement under which the owner who is competent transfers financial benefits to another person.
- (2). The right to receive benefits is based on an offer by the owner by word or action, and acceptance or receipt of the profits by the receiver or his/her representative.
- (3). The right to receive benefits based on limitation is as follows:
  1. Right to receive benefits for lifetime: profit of the property for the life of the owner, or the life of the recipient or a third person's lifetime.
  2. Right to receive benefits for a prescribed period: profit of the property for a determined duration, such as ten years or more or less.
  3. Right to receive benefits based on residency: profit for the period of residency whether based on age or prescribed periods.
- (4). If the right to receive benefits is based on the lifetime of the receiver or third person, it does not terminate by the owner's death or his withdrawal, but if the right to receive benefits is based on the owner's or third person's lifetime, and the receiver dies, then the right to profit transfers to the heir of the receiver until the owner and third person die.
- (5). The method of profiting from the property is based on what the owner determines; if the receiver acted against the owner's determination, or violated or wasted it, he will be responsible to compensate for the losses.
- (6). The costs of facilitation of the profits and maintenance of the property is the responsibility of the owner, but customary costs are the responsibility of the receiver, unless the owner has accepted them [the cost].
- (7). The owner can restrict the use of his property based on any reason that is allowed in the endowment; in this case the property that has been withheld shall remain in the owner's possession; but if the owner has intended the withholding for the sake of Allah and the withholding is permanent, he cannot invalidate the withholding, but if the withholding is subject to a time limitation, he cannot withdraw the property prior to that time. For example, if he says my car will be at the disposal of orphans or students for ten years just for the sake of Allah, he must be accountable for that. But if the withholder dies before ten years, the mentioned property will be transferred to his heirs after ten years. If there is no time period mentioned then the withholder can invalidate the endowment any time he wishes. This

provision is also applicable for a lifetime endowment, prescribed time period, and the right to benefit from the living in a residence, and even if the withholding is not for the sake of Allah, the withholding can be terminated.

## CHAPTER FOUR: GIFTS

### Definition and Components

#### **Article 249:**

(1). A grant is an agreement on the basis of which the ownership title of a property is transferred to another person by the owner as a gift.

(2). The components of such an agreement are:

1. Granting party: the person who owns the property and transfers the ownership of the gifted property at will.
2. Granted party: the person who takes ownership of the gifted property.
3. Granted property: the gifted property.

### Conditions under Which Grant is Valid

#### **Article 250:**

(1). A grant occurs when the granting party offers the grant verbally or by his/her actions and the granted party or his/her representative accepts or receives the granted property by word or action. If the representative happens to be the granting party or the granted property is with the granted party, the grant is automatically approved.

(2). To be considered approved, the grant must happen immediately and not be conditioned on anything, unless the condition is part of the validity of the grant.

(3). The granting party is entitled to impose a condition on the granted party, such as declaration of a statement, performance of an action, or sale of a property in return for the grant.

(4). After reaching the agreement, the granting party can delay the transfer of the granted property. Permission of the granting party is necessary for the granted party to take possession of the property. Without the granting party's permission the granted party cannot take physical possession of the property simply because the grant agreement is reached, unless the granted party has been given new permission to take possession of the property by the granting party.

(5). The granting party must have legal ownership of the property that is being granted; and must be legally competent to financially manage the property

(6). Acceptance of a granted property can happen before the death of the granting party or his/her withdrawal of the agreement.



(7). Death, denial, or exile of the granting party after reaching the agreement, and death of granted party before accepting the grant, shall terminate the agreement. Death of either party before the physical handover of the granted property shall terminate the agreement.

### Conditions of the Granted Property

#### **Article 251:**

(1). The granted property shall have the following characteristics:

1. Must exist or potentially exist.
2. Must have value.
3. Can be possessed legally. Granting alcoholic beverages and pork is not legal for a Muslim, even if the granting party is a non- Muslim.

(2). If the granted property is commonly owned, the permission of all other owners is necessary.

### Revocation of Grant Agreement

#### **Article 252:**

(1). The granting party can revoke the grant agreement at any time as long as the property exists.

(2). The profits from the *Noma-e-Mofasel* (a profit separate from the actual property) earned after the physical transfer of the property when the granting party revokes the grant agreement are considered to be the granted party's property. However, *Noma-e-Motasel* which cannot be separated from the actual property such as weight, height and length [of an animal] belong to the granting party. The profits earned from *Noma-e-Mofasel* after the grant agreement but before the property is received, belongs to the granting party.

(3). Pregnancy/fetus of a granted animal is considered a *Noma-e-Mofasel*. If the granted property is believed to be defective, the granting party shall not have the responsibility to make remedial payment after he/she revokes the grant agreement.

(4). After revocation of the agreement by the granting party, the additional value due to any modification of the granted property by the granted party shall be returned to the granted party.

(5). A creditor who has forgiven a debt, cannot revoke the forgiveness of the debt.

(6). Individuals donating their property for the purposes of charity (for the sake of Allah), *Nazr*, *zakat* (alms), *Khoms* (1/5 of the property) and religious dues, and other religious obligations cannot revoke their agreement.

(7). If the granted party includes parents, child, child of child, relatives, or spouse of the granting party, the granting party shall not have the right to revoke the agreement.

(8). A grant agreement conditional on getting property in return for the grant shall not be revoked.



(9). Any substantial change, loss or damage in the granted property shall overrule the right to revoke the grant agreement. Death of the granting party and physical transfer of the granted property will also overrule the right to revoke the grant agreement.

Date of Enforcement

**Article 253:**

This law is enforceable from the date of endorsement, and it shall be published in the Official Gazette.



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## **Glossary**

<i>Arsh</i>	Term referring to the amount of damages specified by law
<i>Bayen</i>	Irrevocable
<i>Dirham</i>	Unit of Currency
<i>Diyat or Dia</i>	Both blood money and ransom
<i>dukhuul</i>	Sexual penetration
<i>Edat or Eda</i>	The waiting period for a woman (four months and 10 days)
<i>Efza</i>	The mixture of urination and menstrual discharge channels or menstrual discharge and excremental channels or three of them.
<i>Ehraam</i>	A special white cloth used as garb during Hajj (pilgrimage)
<i>Esteswabi</i>	Making the right decision
<i>Etlae supervise</i>	Informant
<i>Farz</i>	Duty, obligation
<i>Feqh or Fiqh</i>	Islamic Jurisprudence
<i>Habwah</i>	distinctive goods
<i>Had</i>	Limit, boundary, punishment
<i>Had-e-Qazf</i>	False accusation of unlawful intercourse
<i>Hajb</i>	Obstacle
<i>Hajb Hirmani</i>	Referred to a person whose being causes absolute disinheritance to others
<i>Hajb Noqsani</i>	Person who causes partial disinheritance to others
<i>Haqullah</i>	Allah's right (state's right)
<i>Haram</i>	Unlawful, religiously prohibited
<i>Hogoqullah</i>	Allah's rights (state's rights)
<i>Hukmi</i>	Absolute, dogmatic
<i>Ijtihad or Ejtehad</i>	Derive and deduce religious opinions about some matters
<i>Ilaa</i>	The foreswearing by the husband of conjugal relations
<i>Ja'fari</i>	One of the largest Shiite schools of thought
<i>Jub</i>	Crooked or injured penis
<i>Kerahat</i>	Hideous
<i>Khayrat</i>	Charity
<i>Khola or Khula</i>	Separation of wife in return for a payment to husband
<i>Lea'an</i>	When husband accuses his wife of adultery or when he denies affiliation with a child
<i>Lezakar Masal Hazul'esneen</i>	Man receives 2/3 and Woman receives 1/3
<i>Mahr</i>	Mandatory gift or dowry from groom to bride
<i>Mahr-e- Muajal</i>	Immediate dowry (to be paid prior to sexual intercourse)
<i>Mahr-e-Moajal</i>	to be conferred at a later time
<i>Mahr-ul-Mosama</i>	Specified <i>Mahr</i> (gift from groom to bride)
<i>Mahr-ul-Mota'a</i>	Dowry from man to woman in temporary marriage
<i>Mahr-ul-Sunna</i>	Specified <i>Mahr</i> in <i>Sunnah</i>
<i>Marja Taqlid Fatwa</i>	A recognized religious authority that issues ruling on a point of Islamic law.
<i>Masloob-ul-Elabara</i>	One who is banned from expressing his/her opinion

<i>Mufsada</i>	Devious
<i>Mujtahed</i>	Clergy practicing religious jurisprudence
<i>Nekah</i>	Marriage contract
<i>Qamari</i>	Lunar
<i>Qazaf</i>	false accusation of sexual intercourse by others
<i>Rad</i>	Redistribution
<i>Rajyee</i>	Revocable
<i>Rojo</i>	Return
<i>Saheban-e-Farz</i>	Heirs whose portions are specified in Quran.
<i>Sharia</i>	Islamic Jurisprudence
<i>Talaq</i>	Divorce
<i>taleq</i>	Person who gives/initiates divorce
<i>Tohor</i>	Time between two menstrual periods
<i>Wala</i>	Relation between slave and his/her master
<i>Waqf</i>	Religious endowment
<i>Wati ba shobha</i>	Sexual penetration in doubt
<i>Zakah or Zakat</i>	Alms
<i>zaowjain</i>	Husband and Wife
<i>Zujate taleq</i>	Divorced woman