

In the Name of Allah, the Gracious, the Merciful

The Muslims (Personal Status) Act, 1991 (24/7/1991)

Title

1. This Act may be cited as the, "Muslims (Personal Status) Act, 1991".

Applications

2. The provisions of this Act shall be applied to all suits, in which hearing of evidence is not completed, and the suits, whose parties consent to resort to such provisions, even though hearing of evidence is completed, in the shade of what has been in force.

Repeal

3. There shall be repealed: -

(a) section 16 of Schedule 11, of the Civil Procedures Act, 1983; (b) the following Sharia Circulars, namely: -

1 and its Supplements 13, 17, 24, 26, 27, 28, 34, 41, 44, and its

Supplements 48, 49, 51, 54 and its Supplements 56, 57, 58, 59, 61,

62 (1A (b)), 65 and 66;

(c) the following Sharia Circulars, namely: - 17/3/1948, 6/1958, 15/1967, 4/1973, 2/1977;

(d) the following Judicial Memoranda, namely: - 1, 3, 4, 25, 26;

(e) The following instructions: - 16, 17, 27

Provisions of the Act to prevail

4. The provision of this Act shall, where any provision in any other law is opposed to, or inconsistent therewith, prevail as to such extent, as may be compatible, in case of opposition, and remove the inconsistency.

Matters without provisions therein,

and the power to make rules

5.(1) There shall be applied the preponderant of the Hanafi School of Jurists, in whatever there is no provision therefor in this Act, and there shall be reverted, in case of matters, for the origin of which there is a provision, or need interpretation or construction, to the historical origin, from which the law is derived.

(2) The Supreme Court - Personal Status Circuit - may make rules for the interpretation or construction of provisions of this Act, in accordance with the safeguards, mentioned in sub-section (1).

Association with legal principles

while applying the Act

6. The Judge in applying the provisions of this Act, shall presume the following juristic principles, namely: -

(a) reconciliation is permissible between Muslims, save reconciliation, which legitimizes a prohibited thing, or prohibits a legitimate thing;

(b) certainty shall not be removed by doubt;

(c) the origin is: -

(i) that what has been shall remain as it has been;

(ii) freedom from liability;

(iii) non-existence is in casual capacities;

(d) habit is governing;

(e) what has lapsed shall not be regained;

(f) rule of the subjects is contingent on interest;

(g) operation of the speech is better than neglecting it;

(h) mention of some of what is indivisible is like mention of the whole thereof;

(i) No speech shall be attributed to the silent, but silence, in the context of speech is expression;

(j) Customary signs of a dumb person are like expression by tongue;

(k) who expedites something before its due time, shall be punished with his deprivation thereof;

(l) who endeavors to avoid what has been done on his part, his endeavor shall be reverted thereto;

(m) Injury shall be removed;

(n) experts shall be sought to help in knowing soundness and capacity and their defects together.

Book I

Marriage Provisions and its Effects Part I

Betrothal

7. Betrothal is a promise to marry in the future, and there shall enter its rule reciting of Surat Al-Fatiha (Opening Chapter) and exchange of presents, and whatever may be subject of Sharia considered custom.

Betrothal bars

8. Betrothal of a perpetually, or temporarily prohibited woman for marriage shall be prevented.

Termination of betrothal

9. Betrothal shall be terminated in any of the following cases, namely: -

- (a) retraction thereof by both parties, or one thereof;
- (b) death of one of the two parties;
- (c) a bar against marriage.

Betrothal retraction effects

10. (1) Where one of the two parties retract the betrothal, without justification, he shall not retribute anything of what he has presented to the other.

(2) Where one of the parties retracts betrothal, for justification, he shall retribute what he has presented, where existent, or its value on the day of receipt, where consumed.

Part II

Marriage Definition of marriage

11. Marriage is a contract between a man and a woman with intention of perpetuity, which permits enjoyment by each one of the other, in the Sharia way.

Part III

Pillars of The Marriage Contract The two pillars

12. The two pillars of marriage are:

- (a) the two spouses;
- (b) offer and acceptance.

Chapter I

Conditions of Validity of The First Pillar (Two Spouses) Two spouses

13. There shall be required of the two spouses, that: -

- (a) the woman shall not be perpetually, or temporarily prohibited for the man;
- (b) they shall be identified;
- (c) they shall be willing;
- (d) the husband shall be fit for the wife, in accordance with the provisions of this Act.

Chapter II

Validity Conditions of the Second Pillar (Offer and Acceptance) Offer and Acceptance

14. There shall be required in offer and acceptance that they shall be: -

- (a) immediate, not indicating temporariness;
- (b) acceptance shall correspond to the offer; explicitly or implicitly;
- (c) in one sitting;
- (d) offer shall remain valid until acceptance is issued;
- (e) each of the present contracting parties shall be hearing the speech of the other and understanding that what is meant therewith is marriage;
- (f) they shall be in writing, in case of absence, or inability to speak, where writing is impossible, then by intelligible sign.

Chapter III

Prohibited Degrees by Affinity, Marriage and Suckling Branch I

Permanent Prohibited Degrees Prohibited degrees by affinity

15. There shall be prohibited, for a person, by reason of affinity, to marry: -

- (a) his ascendant even though being high;
- (b) his descendant even though being low.
- (c) descendants of one of, or both parents, even though being low;

- (d) first class of the direct descendants of his grandfathers.

Prohibited degrees by marriage

16. There shall be prohibited, for a person, by reason of marriage, to marry: -

- (a) The spouse of one of his ascendants even though being high or one of his descendants, even though being low;
- (b) ascendant of his wife even though being high;
- (c) descendants of his wife, with whom marriage has been consummated, even though being low.

Prohibited degrees by suckling

17. There shall be prohibited by suckling what is prohibited by affinity, where suckling takes place in the first two years, by five satisfying separate suckles.

Prohibited degrees by exchanged imprecation

18. There shall be prohibited for a man to marry whoever with whom he has exchanged imprecation (li'an}, unless he has belied himself, and the libel (Qazf} Hud has been executed thereon.

Branch II

Perpetually Prohibited Degrees

19. There shall temporarily be prohibited: -

- (a) joining even though waiting period (l'dda} between two women, where one of them is presumed a male, he shall be prohibited to marry the other;
- (b) marry more than four wives even though one of them is in the waiting period (l'dda};
- (c) another's wife or his (Mu'tadda};
- (d) a triply divorced, her divorcing husband shall not validly remarry her, unless after the expiry of the waiting period (l'dda} from another husband, who has consummated marriage with her in a valid marriage;
- (e) marriage of a woman, who adopts no heavenly religion.

Chapter IV Fitness in Marriage

Fitness on part of the husband

20. Fitness shall be deemed on part of the husband, upon the beginning of contract.

What counts in fitness

21. What counts in fitness shall be by religion and morality.

Right to fitness

22. Fitness shall be the right of every one of the guardians. Where the guardians are equal, in degree, the consent of one of them shall be as the consent of all.

Establishment of fitness right

23. Fitness right shall be established for the nearest, where guardians are different in degree.

Marriage of an adult woman without consent of the nearest guardian, to an unfit man

24. The nearest guardian may apply for rescission of the contract, where an adult sane woman is married without his consent, to a non-fit man; however, where there appears pregnancy thereon, his right shall lapse.

Chapter V

Contract Validity Conditions Contract validity conditions

25. There shall be required for validity of the marriage contract: -

- (a) attestation of two witnesses;
- (b) dowry shall not be waived;
- (c) a guardian with his conditions, in pursuance of the provisions of this Act.

Branch I

Testimony in Marriage Testimony in marriage

26. There shall be required of the two witnesses that they are two Muslim men, or one man and two women, (Mukalafin} subject to Sharia obligations and from those, who are trustworthy, hearing the offer and acceptance understanding that marriage is what is meant by both.

Branch II

Dowry Provisions Dowry

27. Whatever may, by Sharia, be bound thereby shall validly be dowry, whether property, work or benefit.

Ownership of dowry

28. Dowry is the property of woman, and no inconsistent condition shall count.

General provisions with respect to the dowry

29. (1) Dowry may be expedited, or postponed, wholly or part of it, at the time of contract.

(2) Dowry shall be binding wholly by valid contract, and shall be ascertained by consummation, or death, and the postponed thereof shall be due by the time becoming due, death or irretrievable divorce.

(3) A divorced wife, before consummation shall be entitled to half the dowry, where named, otherwise she shall be entitled save to enjoyment (Mutaa') not exceeding half the dowry of the like thereof.

(4) Where dowry is not named, or naming is incorrect there shall be due the dowry of the like thereof.

(5) Where the spouses differ upon the dowry amount, evidence shall be on the wife; where she fails, statement shall be for the husband on his oath, unless he alleges what may not validly be dowry of her like customarily; then dowry of the like shall be decreed; and likewise the judgment upon difference between one of the two spouses and heirs of the other, or between their heirs.

Dowry and consummation

30. (1) The wife may refrain from consummation, until she receives her advanced dowry.

(2) Where the wife consents to consummation, before receiving her dowry from the husband, it shall be deemed as debt in his liability.

Delivery of property to the betrothed as being dowry

31. Where the betrothed delivers to his betrothed prior to the contract property as being of dowry then one of the parties deviates from concluding the contract, or one of them dies, he shall have the right to recover what he has delivered in kind, where existing; otherwise it's like, or value on the day of delivery.

Branch III

Guardianship in Marriage Order of guardians

32. (1) Guardian in marriage is a consanguineous by himself, as to the inheritance order.

(2) Where two guardians are equal in affinity, then marriage shall be valid, by guardianship of any one of them.

(3) Where the furthestmost guardian undertakes the contract, in the presence of the nearest guardian, it shall be concluded subject to the ratification of the nearest guardian.

(4) The contract shall be valid, upon ratification of the special guardian where a woman marries by public guardianship, in his presence, in the contract place or a near place in which his opinion may be taken; where he does not ratify, he shall have the right to apply for rescission, unless one year from the date of consummation has not elapsed of the date of consummation.

Guardianship conditions

33. A guardian shall be required to be a sane male, adult and Muslim, where guardianship is on a Muslim.

Marriage of an adult virgin by guardian

34. (1) An adult shall be married by her guardian, upon her permission and consent to the husband and dowry; and her statement of her adulthood shall be admissible, unless belied by what is apparent.

(2) The acceptance of an adult virgin shall implicitly or by implication be necessary, where her guardian contracts her marriage without her permission, then he tells here the contract.

Absence of the nearest guardian

35. Where the nearest guardian is absent, and in waiting for his opinion there is loss of interest in the marriage, guardianship shall be transferred to the one who follows him.

Lapse of guardianship

36. Where the guardian forsakes maintenance of his ward for a full one year, without excuse, together with its being Sharia binding thereon, his guardianship thereof shall lapse.

Judge undertaking marriage

37.(1) Where the guardian refrain from marriage of his ward, she may apply to the judge to marry her.

(2) The judge may permit the marriage of whoever may have applied for marriage; it is proved therefor that her guardian refrains from marriage, without justification.

Guardianship of the Judge

38. The Judge is the guardian of whoever has no guardian.

Limits of the judge guardianship

39. The judge shall not marry whoever he has guardianship thereon, to himself, to the ascendant or descendent thereof.

Marriage of an insane, imbecile and distinguishing child

40.(1) Shall not be concluded marriage of an insane, imbecile or distinguishing child, save by his guardian after appearance of a probable interest.

(2) Distinguishing shall be by attaining the age of ten years.

(3) A guardian of a distinguishing girl shall not conclude her marriage contract, without the judge permission, for a probable interest; on the condition of fitness of the husband and dowry of the like.

Marriage of an interdicted for dissipation

41. There may be valid marriage of interdict for dissipation; provided that the dowry shall be appropriate to his financial condition.

General provisions

42. (1) Spouses are upon their conditions, save a condition, permitting a prohibited, or prohibiting a permitted thing.

(2) Where the contract is coupled with a condition inconsistent with its objective, or aims, the condition shall be void, and the contract shall be valid, other than the condition of temporariness, which avoids the contract.

(3) No condition shall count, save where it is expressly provided therefor by the condition marriage contract.

Chapter VI

Provisions of Trousseau and House Effects Definition of house effects

43. House effects are what is present in the marriage place of abode, such as furniture, dresses, jewelries and utensils likewise including animals.

Trousseau

44.(1) The husband is bound to prepare the trousseau for the house of marriage. Where the wife prepares some thereof, the same shall be her property.

(2) The husband may benefit by the trousseau owned by the wife, if the marriage subsists; who he damages the same by trespass, shall indemnify.

Adult woman trousseau by delivery

45. An adult woman shall acquire, by delivery, such trousseau, as her father may have equipped her therewith while he is healthy. Where he equips her while he is in death-bed she shall not acquire the same, save by ratification of the heirs.

Trousseau of a minor girl

46. A minor girl shall acquire such trousseau, as her father may have equipped her therewith, merely by purchase thereof, even though she does not receive the same.

The father equipping his daughter with trousseau

47. Where the father equips his daughter and hands her with her trousseau to the husband, then he alleges, or his heirs allege that what he has delivered to her, or part thereof is a loan; and she alleges, or her heirs allege that the same is vesting into her, the custom of the town shall be considered, where

- (a) The custom of the town prevails that the father pay the like of trousseau disputed thereon, as trousseau, not loan, the father, or his heirs shall be charged with evidence; where the suit is proved, the same shall be decreed; otherwise the statement shall be hers on her oath, or the statement of her heirs on oath, where she is dead;
- (b) Where the custom is common between the same, or the trousseau is more than what the like of her may be equipped therewith, she, or her heirs shall be charged with evidence; where the suit is proved, the same shall be decreed; otherwise the statement is that of the father, or his heirs, on oath.

Mother in trousseau cases

48. The mother shall have the rule of the father in trousseau cases.

Jewelry

49. Where the two spouses disagree on the jewelry, which the husband has brought; and he alleges loan or bringing the same for adornment, and she alleges gift, the wife shall be charged with evidence; where she establishes it, it shall be decreed; otherwise the statement is that of the husband, on his oath.

House effects

50.(1) Where the two spouses disagree while marriage subsists, or after separation, on the house effects which is useful for one thereof, not for the other and they have failed to adduce evidence, there shall be decreed for the wife, on her oath, such as may be useful for women; and the husband on the oath thereof, such as may be useful for men.

(2) Where the two spouses disagree on house effects, while marriage subsists, or after separation, whoever adduces evidence, it shall be admissible therefrom, and the same shall be decreed therefor, even though the disputed effects are such as may be useful for the other.

(3) Where the two spouses or their heirs disagree on the effects, which are useful for one of them, not the other and they have adduced evidence, the evidence of whoever may prove otherwise than what is apparent shall have preponderance.

(4) Where the two spouses or their heirs disagree on the house effects which are useful for both and they fail to adduce evidence the judge shall decree the disputed effects in equal shares between them, on the oaths thereof.

(5) Where the two spouses, or their heirs disagree on the house effects, which are useful for them, and they adduce evidence, the disputed effects shall be decreed between them in equal shares.

(6) Where one of the spouses dies, and dispute occurs on the house effects, between the living and the heirs of the deceased, what may be useful for both man and woman shall be for the living thereof, on his oath, upon adducing evidence, or their failure to prove.

Chapter VII

The Rights of Spouses The rights of the wife

51. The rights of the wife on her husband are: -

- (a) Maintenance;
- (b) permitting her to visit her parents and her relatives of the prohibited degrees and their visits, in kindness;
- (c) not to: -
 - (i) molest her private property;
 - (ii) prejudice her materially, or immaterially.
- (d) justice between her and the rest of wives, where the husband has more than one wife.

The Rights of the husband

52. The rights of the husband on his wife are:

- (a) care therefor and obey him in kindness;
- (b) preserve him in herself and his property.

Chapter IV Types of Marriage

Two types of marriage

53. Marriage is valid and invalid.

Valid marriage

54. Valid marriage is that one of the pillars and all conditions of validity are satisfied, in accordance with the provisions of this Act.

Types of valid marriage

55. Valid marriage is effective and binding, or effective and not binding, or non-effective.

Definition of types of valid marriage

56. Marriage, which is: -

- (a) effective and binding, is what is not subject to ratification of anyone, nor liable to rescission, in pursuance of the provisions of this Act;
- (b) effective and not binding, is what is liable to rescission, by reason justified by this Act.
- (c) Non-effective, is what is concluded subject to ratification of whoever may have the right of ratification.

Valid effective and binding marriage

57. Valid effective and binding marriage shall entail, since its conclusion all its Sharia effects.

Valid non-effective marriage

58.(1) Valid non-effective marriage shall not entail any of the effects before ratification; and where ratified, it shall be deemed as effective, of the time of contract.

(2) Where there occurs consummation in non-effective marriage, it shall have the rule of defective (Fasid) marriage.

Two types of invalid marriage

59. Invalid marriage is void, or defective.

Definition of void marriage

60. Void marriage is the one, which one of its pillars or one of the conditions of validity of the pillar has become defective.

Effect of void marriage

61. Void marriage shall not entail any of the marriage effects.

Definition of defective (Fasid) marriage

62. Defective (Fasid) marriage is what the pillars of which are satisfied, and one of its validity conditions has become defective.

Effect of defective (Fasid) marriage

63. Defective (Fasid) marriage shall not entail any effect, before consummation.

Effects of defective (Fasid) marriage after consummation

64. The following effects shall be entailed by defective (Fasid) marriage: -

- (a) the lesser of the named, or like dowry becoming mandatory;
- (b) proof of affinity;
- (c) marriage becoming prohibited;
- (d) (I'dda) waiting period becoming mandatory.

Part V Effects of Marriage

Provisions of Maintenance, Obedience, Affinity and Custody Chapter I

Maintenance General Provisions

Maintenance contents

65. Maintenance includes food, clothing, dwelling, medical treatment, and everything as the constituents of human life may be achieved.

Maintenance assessment

66. Due regard, in assessing maintenance, shall be given to affluence of the maintainer and economic status in time and space.

Increasing and decreasing maintenance

67.(1) Maintenance may be increased, or decreased, following change of conditions.

(2) There shall not heard the suit of increasing or decreasing before the lapse of six months of imposing maintenance, save in exceptional circumstances.

(3) There shall be decreed increasing or decreasing of maintenance, of the date of instituting the suit.

Precedence of continuous maintenance

68. Continuous maintenance shall have precedence over all debts.

Branch I Marriage maintenance

Date of marriage maintenance becoming mandatory

69. Marriage maintenance shall be mandatory on her husband as of the time of valid contract.

Previous maintenance

70.(1) There shall not be decreed for a wife the maintenance of more than three years prior to the date of instituting the suit, unless the two spouses otherwise agree thereon.

(2) There shall be required solvency of the husband for judgment of a previous marriage maintenance.

Interim maintenance and borrowing

71.(1) The judge, during considering the maintenance suit, may prescribe, upon application by the wife an interim maintenance therefor, after proof of its justifications, and his decision shall be accompanied by expedient execution by force of law.

(2) The judge shall permit the wife to borrow marriage maintenance.

Alimony of a waiting wife (Mu'tadda) from divorce, judicial divorce or rescission

72. There shall be mandatory on the husband alimony of his waiting wife (Mu'tadda) from divorce, judicial divorce or rescission, unless rescission, is for a reason prohibited on part of the wife.

Maintenance entitlement

73. There shall not be entitled the waiting wife (Mu'tadda) who is: -

- (a) non-suckling, to more than one year, of the date of divorce;
- (b) suckling, to maintenance for more than three months after lapse of the term of suckling, where she alleges her menopause for suckling and takes the oath thereon; provided that the maintenance period shall not exceed two years and three months of the date of delivery.

Entitlement of waiting wife (Mu'tadda) for death

74. A waiting wife (Mu'tadda) for death shall be entitled to dwelling in the matrimonial home, during the waiting period (l'dda), unless she gets outside the same by her consent.

Cases of deprivation of maintenance

75. There shall be no maintenance for a wife in any of the following cases, namely her: -

- (a) refraining from movement to the matrimonial home, without Sharia excuse;
- (b) leaving the matrimonial home, without Sharia excuse;
- (c) preventing the husband to enter the matrimonial home, without Sharia excuse.
- (d) work outside the home, without her husband agreement, unless he is arbitrary in preventing her to work;
- (e) refraining from travel with her husband without Sharia excuse.

Termination of Maintenance Obligation

76. The wife maintenance obligation shall lapse in any of the following cases, namely: -

- (a) payment;
- (b) discharge;
- (c) death of one of the spouses.

Arrangement of safe dwelling

77. The husband shall prepare for his wife a safe dwelling, appropriate to his status.

Dwelling and movement of wife

78. A wife shall live with her husband in the dwelling prepared by him and shall move therefrom by his movement unless she stipulates otherwise in the contract or moving is intended to prejudice her.

Dwelling with another wife (Darra)

79. A husband shall not dwell with his wife another wife (Darra) in the same home, unless she consents thereto, and she shall have the right to retract whenever she may please.

Suckling charge

80.(1) A suckling divorced wife shall be entitled to suckling charge, for a maximum period of two years, of the date of delivery.

(2) A suckling divorced wife shall not be entitled to suckling charge, save after the lapse of her waiting period (l'dda) from a retractive or irretractive divorce.

Branch II Maintenance of Relatives Maintenance of Children

81.(1) Maintenance of a young child, who has no money: shall be on his father, until the girl gets married, and the son reaches the limit, at which he likes earn living, unless he is a student, whose maintenance shall be thereon, if he pursues his study in an ordinarily successful way.

(2) Maintenance of an old child, who is unable to earn living for infirmity or illness, shall be on his father, where he has no money, out of which expenditure can be made.

(3) Maintenance of a female shall be on her father or whoever her maintenance may be thereon, where she is divorced, or her husband is dead, unless she has money.

(4) Where the money of the son does not suffice for his maintenance, his father shall be bound by what completed the same, within the preceding conditions.

Education maintenance

82. The child who has no money shall on his father be entitled to the customary education maintenance of his likes, if he pursues his study in an ordinarily successful way.

Suckling charges

83. The farther shall be bound by suckling charges of his child, where it is not possible for his mother to suckle him; and the same shall be deemed as maintenance

Maintenance of child upon loss of his father and grandfather or disability thereof to maintain

84. Maintenance of a child, with no money shall be on his affluent mother where he loses the father, or grandfather, or they are unable to maintain.

Maintenance of parents

85.(1) A male or female, old or young child, who has surplus of his earning shall maintain his parents, where they have no money.

(2) Where parent's money is not enough for maintenance, children who have surplus of their earning shall be bound with what completes the same.

Parent's maintenance together with several children

86.(1) Maintenance of parents shall be divided between the children, according to the affluence of every one of them.

(2) Where one of the children maintains his parents with his consent he shall not revert to his brothers.

(3) Where maintenance is after their being decreed to maintain, the one who maintains may revert to every one of them in accordance with the judgment.

Joining parents to the family of the child

87. Where the earning of the child does not exceed his need and the need of his wife and children, his parents, who entitled to maintenance shall be joined to his family.

Maintenance mandatory

88. Maintenance of everyone entitled thereto shall be on whoever may inherit him of his affluent relatives, according to them

shares in inheritance; where the heir is insolvent the same shall be imposed on whoever may follow him in inheritance, subject to the provisions of section 84.

Multiplicity of those entitled to maintenance

89. Where those entitled to maintenance are several and the one on whom it is due could not have maintained them all, maintenance of the wife shall precede, then maintenance of children, then maintenance of parents and then maintenance of the relatives.

Maintenance of relatives

90. (1) Maintenance of relatives shall be imposed from the date of passing the judgment.

(2) The judge may decree the children maintenance on their father for a period prior to the date of instituting the suit, not exceeding six months unless they agree otherwise.

(3) There shall be required affluence of the father for decreeing previous maintenance.

(4) The judge may pass an interlocutory order for children maintenance, of the date of establishment of the grounds therefor; provided that the order shall be covered by expedient execution.

(5) The judge may permit borrowing the relative maintenance.

Chapter II Obedience Provisions Husband obedience

91. A wife shall obey her husband in such as may not be inconsistent with Sharia ordinances, where the following conditions are satisfied, namely that: -

(a) he shall have discharged thereto her advance dowry;

(b) he shall be trustworthy;

(c) prepare a Sharia house, furnished with the necessary effects among good neighbours.

Wife Refrain from Obedience

92. Where the wife refrains from obeying her husband, her right to maintenance shall lapse during the period of refraining.

Disobedient wife

93. A wife shall be disobedient in any of the following cases namely: -

- (a) Her refraining from executing a final obedience judgment;
- (b) Cases which are disobedience and mentioned in section 75.

Execution of obedience judgment

94.(1) Obedience judgment shall not be executed by force against the wife.

(2) An obedience judgment may twice be executed by peaceful methods, as the judge may deem fit in application of the spirit of Islamic Sharia; provided that the period application shall be one month at least.

Obedience judgment

95 Where the wife rebuts the obedience suit for non-discharge of the advance dowry, or unsuitability of the house, or untrustworthiness of the husband, and shows the same, and her husband denies and she fails to prove and the husband takes the oath to her same rebuttal, the husband shall be charged with evidence, and whenever he proves his suit she shall be decreed to obey him.

Chapter III**Affinity proved**

96. Affinity shall be proved by matrimonial bed, admission or testimony.

Affinity suit

97.(1) Affinity suit may be proved by fatherhood, filiation, absolute or within a right upon the life of the defendant.

(2) Affinity shall not be proved by fatherhood and filiations, upon death of the defendant save within a suit of right.

(3) No affinity attributed to others shall be proved, save within a suit of right.

Branch I**Conjugal Bed Affinity of the baby**

98. Affinity of a baby shall be proved by conjugal bed where the minimum gestation period has elapsed after marriage contract, and meeting between the spouses is possible.

Affinity of a baby by doubtful copulation

99. Affinity of a baby by doubtful copulation shall be proved where he is born in the minimum gestation period, of the date of copulation.

Minimum and maximum gestation period

100. The minimum gestation period is six months and the maximum are one year.

Branch II Admission**Proof of affinity by admission**

101. Affinity shall be proved by admission even in the death bed by the following conditions, namely: -

- (a) the admittee is of unknown affinity;
- (b) shall be adult and sane;
- (c) the like of the admittee may be born to the admitter;
- (d) the admittee believes the admitter whenever he is adult and sane.

Unproved affinity

102. There shall not be proved the affinity of: -

(a) the baby where the admittee is a married or divorced woman, save upon belief of the husband, or divorcor or by testimony;

(b) the child of a divorced widow or absent husband, where she delivers him after more than one year of the date of divorce, death, absence, mutual separation or by the judge in an invalid marriage;

(c) the child of an imprecated wife, where the exchanged imprecation is validly made between the two spouses and its reason is illegitimacy; where the husband belies himself after separation affinity of the child shall be proved.

Affinity admission

103. Affinity admission, other than filiation, fatherhood and motherhood; shall not apply to a non-admitter, save upon his belief, or testimony.

Suit by heirs of admitter of illegitimacy

104. No suit by heirs of admitter of illegitimacy shall be heard, after its proof thereby by valid admission.

Branch III Testimony

Proof of affinity by testimony

105. Affinity may be proved by testimony of two men, by one man and two women or four women.

Proof of delivery and identification of the baby

106. Delivery and identification of the baby shall be proved by testimony of one just Muslim whether male, or female.

Proof of affinity by testimony, fame or hearsay

107. {1} Affinity may be proved by testimony, fame or hearsay.

{2} Testimony by fame or hearsay shall be adduced as conclusive; and where interpreted at the outset, testimony shall be void.

{3} Testimony by fame or hearsay shall not be void by later interpretation, upon cross-examination.

Affinity suit being related to the estate

108. Where affinity suit is related to the estate, testimony of some of the heirs shall have cogency against all in proof of affinity.

Chapter IV

Custody Definition of custody

109. Custody is to keep a child, rear, educate and care therefor, in such way, as may not be inconsistent with the right of the guardian and the child interest.

The right to custody

110. {1} Custody right is established for the mother then women of the prohibited degrees, precedence therein shall be to whoever may be ascendant with the mother, to whoever may be ascendant with the father, wherein consideration shall be to whoever may be nearest, then the nearest from both sides, in the following order: -

- (a) the mother;
- (b) maternal grandmother, however ascendant she may be;
- (c) paternal grandmother, however ascendant she may be;
- (d) full-blood sister then a maternal and then a paternal half -blood sister;
- (e) niece by a full-blood sister;
- (f) niece by a maternal half-blood sister;
- (g) full-blood aunt, then a maternal and then a paternal half-blood aunt;
- (h) paternal half-blood niece;
- (i) full-blood brother nieces, then maternal and then paternal half-blood nieces;
- (j) full-blood aunt, then maternal and then paternal half- blood aunt;
- (k) full-blood aunt of the mother then maternal and paternal aunt of the mother;
- (l) full-blood aunt of the father then maternal and then paternal half-blood aunt of the father;
- (m) full-blood paternal aunt of the mother, then maternal and then paternal half-blood paternal aunt;
- (n) full-blood paternal aunt of the father, then maternal and then paternal half-blood paternal aunt.

(2) Where there no female custodian, from the women, mentioned in sub-section (1), or where she is unfit for custody, the right to custody shall be transferred to sanguineous male relatives, to their order in entitlement to inheritance.

(3) Where there is no one of the sanguineous relatives, mentioned in sub-section (2), or he is there, but he is unfit for custody the right to custody shall be transferred to the young's male uterine relatives other than sanguineous relatives in the following order: -

followings: -

- (a) half-blood maternal grandfather;
- (b) maternal half-blood brother;
- (c) maternal half-blood nephew;
- (d) paternal half-blood uncle;
- (e) maternal full-blood uncle, the paternal and then maternal half-blood uncle.

(4) Where custody is refused by whoever may be entitled thereto of women or men then the right shall be transferred to whoever may be next thereto.

(5) Where there is no one entitled to custody, or no one of those entitle accepts it, the judge shall place the ward with whoever he may trust of men or women, and relatives shall be preferred to strangers, upon satisfaction of conditions, or with one of the institutions qualified for this purpose.

Equality of those entitled to custody

111. Where those entitled to custody are equal in one degree, whoever may be the fittest thereof shall have precedence.

Conditions of Custodian

112. There shall be required of a custodian the following conditions namely: -

- (a) majority;
- (b) sanity;
- (c) honesty;
- (d) ability to breeding the ward, maintenance and care thereof;
- (e) safety from infectious diseases.

Supplementary conditions of custodian

113. There shall be required of a custodian, in addition to the conditions, mentioned in section 112, the following conditions, namely: -

- (a) where she is female, that she shall be: -
 - (i) a uterine relative of prohibited degree of the ward, where he is a male;
 - (ii) without a husband, who is a stranger to the ward, with whom he has consummated marriage, unless the court has considered otherwise for the interest of the ward;
- (b) where he is a male that he shall: -
 - (i) have with him whoever may be fit for custody from women;
 - (ii) be of a prohibited degree of uterine relationship to the ward, where the ward is a female;
 - (iii) be united with him in religion.

Religion of the ward

114.(1) The ward shall follow one of the parents being of the better religion.

(2) Where female custodian is not of the same religion of the father of the Muslim ward, her custody shall lapse by the ward attaining the fifth year of his age, or upon fear of utilizing the custody thereby to rear the ward otherwise than of his father's religion.

Women custody

115.(1) Women custody of the male infant shall continue up to seven years and for a female infant, to nine years.

(2) The judge may permit women custody of a male infant, after seven years up to the age of maturity; and for female infant, after nine years, up to consummation of marriage, where it transpires that interest of the ward requires the same.

Fitness for custody

116.(1) Where the female custodian rebuts the suit of covering the ward by fitness for custody and sets forth the ground thereof the covering suit shall be dismissed; otherwise the sanguineous relative shall take the oath upon her application; where he takes the oath, covering shall be decreed thereto otherwise his suit shall be dismissed.

(2) Setting forth the ground of fitness shall require that the custodian has such characteristics as may exceed the characteristics of the sanguineous relative.

(3) The court may assume inquiry by itself on the fitness ground.

Custody upon the mother leaving the matrimonial home

117. Where the mother leaves the matrimonial home for a dispute, or otherwise custody shall be there for, and the mother shall be bound by custody, where the ward is suckling, unless the judge considers otherwise thereon.

Duty of the father and otherwise of the ward Guardians

118. The father, or otherwise of the ward guardians shall consider his affairs and discipline, direction and education, and shall not spend the night, save with his female custodian, unless the judge considers otherwise.

Travel with the ward

119.(1) No custodian shall travel with the ward inside the country, save upon his guardian's permission.

(2) A custodian, where she is the mother may travel with the ward to her home land, wherein she has been wedded.

Non-custodian travel with the ward

120. No guardian whoever he may be, or otherwise shall travel with the ward during the custody period, save upon permission of his female custodian.

Lapse of the right of a custodian to custody

121. A custodian right to custody shall lapse in any of the following cases namely -

- (a) default of any of the conditions mentioned in sections 112 and 113;
- (b) residence of a new female custodian with one female, whose custody has elapsed by a reason other than bodily disability;

(c) Subject to the provisions of sub-section (1) of section 119, the right of a female custodian to custody shall lapse where she domiciles in a country wherein it is difficult for the ward's guardian to discharge his duties.

Return of custody to whoever it may have elapsed therefrom

122. Custody shall return to whoever it may have elapsed therefrom, whenever the cause of its lapse has been removed.

Visit to A Child in Nursing

123.(a) Where the ward is in the custody of one of the parents, the other shall have the right to visit him and accompanying him, provided that the judge's order to visit and accompany the ward shall be covered by urgent execution;

(b) one of the ward's parent is dead or absent, the relatives of the ward of the prohibited degrees shall have the right to visit him, as the judge may prescribe;

(c) ward is with other than his parents, the judge shall appoint whoever may be entitled to visit him, from his relatives of the prohibited degrees.

Entitlement of custody charge

124. Custody is work, for which a female custodian is entitled to charge; according to the consanguineous relative's condition, solvent, or insolvent.

Cases of non-entitlement to custody charge

125. A custodian shall not be entitled to charge in any of the following cases, namely: -

(a) the female custodian being a mother in the waiting period of a restrictive or irrevocable divorce from the father of the ward;

(b) the ward exceeding the age of women's custody, and the judge permits continuing custody up to majority for a male, and up to marriage for a female.

Entitlement to dwelling rent

126. A female custodian shall not be entitled to dwelling rent where she owns a dwelling in which she resides or is married, and the infant is with her.

Book II Separation between Spouses

Separation modes

127. Separation between spouses shall occur by any of the following's modes, namely: -

(a) husband's will, which is named divorce;

(b) two spouses' will, which is named "khula" or divorce for money;

(c) judicial decree, which named divorcing or rescission;

(d) death of one of the spouses.

Part I Chapter I Divorce

Definition of divorce

128. Divorce is the breakage of wedlock, in the form laid down by Sharia therefor.

Cases of divorce being inflicted

129. Divorce is inflicted: -

(a) by express word of mouth or in writing; and upon disability in both, then by understandable sign;

(b) by writing, where the husband intends to inflict divorce.

Cases of non-inflicting divorce

130. There shall not be inflicted the divorce, which is: -

(a) dependent on doing, or leaving an act; save by intent;

(b) perjury on an oath of divorce, or the prohibited;

(c) coupled with number, by word of mouth, in writing or by sign, save one retractive divorce.

Consecutive divorce

131. Consecutive divorce shall be inflicted as one divorce, where it is intended to be as assurance; otherwise it shall be inflicted in the number thereof.

By whom divorce may be inflicted

132. Divorce shall be inflicted by the husband, his agent or the wife where the husband invests her with her own status.

Time of inflicting divorce

133. Divorce shall be ascribed to the time of its inflicting; where proof thereof is not possible, then to the time of proof of separation or of the date of admission thereof before the court.

Capacity of the divorcer

134.(1) There shall be required of the divorcer sanity, majority and voluntariness.

(2) Divorce of an undistinguishing person by reason of insanity, imbecility, full intoxication, compelling coercion, or otherwise of reasons, which deprive of reason.

Condition of inflicting divorce

135. Divorce shall not be inflicted on the wife, unless she is in a valid marriage, which is de facto, or de jure subsisting.

Types of divorce

136. Divorce is of two types: retractive and irretroactive, as follows: -

(a) Retractive divorce, does not terminate marriage contract

, save by lapse of the waiting period;

(b) Irretroactive divorce, terminates the marriage contract and it is of two types: -

(i) Irretroactive divorce of minor irretroactiveness, after which the divorced wife is not permissible to her divorce, save upon new contract and new dowry;

(ii) irretroactive divorce of major irretroactiveness, after which the divorced wife is not permissible to her divorce, save the expiry of her waiting period (l'dda) of another husband, who has consummated marriage with her in a valid marriage.

Retractive divorce inflicted

137. Every divorce shall retractively be inflicted, save the divorce complementing the three ones, the divorce prior consummation, the divorce upon consideration and what the law provides for its irretroactiveness.

Enjoyment (Muta'a)

138.(1) A divorced wife shall be entitled to enjoyment (Muta'a) other than waiting period (l'dda) alimony according to the affluence of the divorcer, which does not exceed six months' alimony.

(2) There shall be excluded from the provisions of sub-section (1), the following cases, namely: -

(a) judicial separation for non-maintenance by reason of the husband's insolvency;

(b) judicial separation for defect, where it is by reason;

(c) Judicial separation by (Khula'), ransom or in consideration of property.

Remarriage of a divorced wife permissible

139 A husband may remarry his divorced wife, if she is in the waiting period of a retractive divorce, even though she does not consent to the same; and this right shall not lapse by waiver thereof.

Infliction of retraction

140. Retraction shall be inflicted by act, word of mouth or in writing; and upon disability thereof, by intelligibly sign.

Conditions of validity of retraction

141. There shall be required for validity of retraction informing the divorced wife thereof, during her waiting period (l'dda).

Part II**Khula' (Divorce for consideration) Definition of (Khula' for consideration)**

142. (Divorce for consideration) is breaking wed lock by consent of both spouses for consideration, by the word of Khula' (divorce for consideration) or within the meaning thereof.

General provisions of Khula' (Divorce for consideration)

143.(1) Both spouses may consent upon termination of the marriage contract by Khula' (Divorce for consideration).

(2) Khula' (Divorce for consideration) is an oath on part of the husband and consideration on part of the wife.

(3) Khula' (Divorce for consideration) shall be by consideration sacrificed by the wife.

(4) Khula' (Divorce for consideration) shall be deemed as irretroactive divorce.

Conditions of validity of Khula' (Divorce for consideration)

144. There shall be required for validity of Khula' (Divorce for consideration) the capacity of the wife to sacrifice and capacity of the husband to inflict divorce.

Consideration of Khula' (Divorce for consideration)

145. Consideration of Khula' (Divorce for consideration) shall not be waiver of custody of children nor anything of their rights.

Khula' (Divorce for Consideration) in cases of wrongful naming of consideration

146. Khula' (Divorce for consideration) shall be valid in cases wherein the consideration is wrongfully named; and consideration shall be void.

Consideration of Khula' (Divorce for consideration) mentioned

147. Where: -

- (a) Consideration in Khula' (Divorce for consideration) is mentioned, what is mentioned shall be due;
- (b) No consideration in Khula' (Divorce, for consideration) is named the provisions of divorce shall apply;
- (c) Consideration is mentioned, and there is no word of Khula' (Divorce for consideration) or what is in its meaning, it shall be divorce for property.

Definition of divorce for property

148. Divorce for property is every divorce in which consideration is mentioned, without the word of Khula' (Divorce for consideration) or what is in the meaning thereof.

Irretractiveness of divorce for property

149. Divorce for property shall be inflicted as irrevocable one, unless the consideration is avoided, whereupon it shall be inflicted as retractable.

Lapse of divorce for property

150. Divorce for property shall not lapse, or be exonerated, unless expressly if it is consideration for divorce.

Part III

Judicial Separation Chapter I

Judicial Divorce for Defect or Illness Divorce for defect or Illness

151. (1) A wife may apply for judicial divorce from her husband for defect or chronic disease he has sustained before the contract, and she has not known it, or it has occurred after the contract, and she has not consented thereto, whether mental, or physical, which is not expected to be cured, or expected after more than one year and she cannot live with him except with injury.

(2) Where the defect or illness expected to be cured before the expiry of one year, the court shall give the patient the time of one year, before the judicial divorce.

Seeking the help of experts to know defect or illness

152. Help of experts from specialists shall be sought to know the defect, or illness.

Chapter II

Judicial Divorce for Impotence Application for judicial divorce for impotence

153. A wife may apply for judicial divorce by reason of impotence of her husband, whether the impotence is before the contract, or sustained after the contract and consummation.

Right to apply for judicial divorce for impotence, to lapse by consent

154. The right to apply for judicial divorce by reason of impotence shall not lapse by consent.

Medical examination

155. The husband shall be referred for medical examination, in any of the following cases, namely: -

- (a) proof of impotence by his own admission.
- (b) his denial of impotence, and her virginity being proved by her examination;
- (c) his denial of impotence, and her non-virginity by medical examination and his recoil from oath;
- (d) his marriage thereof as not virgin and his denial of impotence upon pleading.

The two cases of impotence being proved incurable and curable

156.(1) Where it is proved by medical examination that impotence is not expected to be cured or expected to be cured after more than one year, the court shall separate them, upon her application, without adjournment of the suit.

(2) Where it is proved by medical examination that impotence is curable, within less than one year, the judge shall adjourn the suit for the period of one year.

Re-medical examination and the husband being proved cured

157.(1) Where the two parties dispute over the illness, after the period of adjournment, medical examination on the husband shall be repeated to know recovery, or otherwise.

(2) Where the husband is proved to have recovered by medical examination thereon, after the period adjournment, the suit shall be dismissed; otherwise she shall judicially be divorced therefrom.

Seeking the help of those possessed of experience and specialization to know the possibility of recovery and suitable period therefor

158. There shall be sought help of those possessed of experience and specialization, from Muslim physicians, to know the possibility of recovery, or otherwise and suitable period for recovery.

Adequacy of testimony of a single Muslim physician

159. The testimony of one Muslim physician shall be adequate.

Irretractiveness of divorce for impotence

160. Divorce for impotence shall be irrevocable.

Application for judicial divorce for emergent impotence

161. A wife shall not apply for judicial divorce for emergent impotence, after the contract, unless she fears seduction for herself.

Chapter III

Judicial Divorce for Injury and Dissension Application for judicial divorce for injury and proof of injury

162- (1) A wife may apply for judicial divorce for injury, with which continuous cohabitation of her like is not possible, and not permitted by Sharia.

(2) Injury shall be proved by all Sharia modes of evidence, including the testimony of fame and hearsay.

Arbitration

163.(1) Where injury is not proved, and dissension continues between the two spouses, and reconciliation is not possible and the wife returns after three months to apply for judicial divorce, the judge shall appoint two arbitrators from their relatives, if possible, otherwise from those whom he expects to have ability for reconciliation.

(2) The judge shall order the two arbitrators to take the oath to perform their task fairly and honestly and shall fix for them the period of arbitration.

Duties of the two arbitrators

164.(1) The two arbitrators shall verify the reasons of dissension and exert effort to reconcile between the two spouses.

(2) The two arbitrators shall submit to the judge a report on their endeavours, including the extent of insult of each of the two spouses, or of one thereof to the other, and the proposals thereof.

Validation of the two arbitrators report, or appointment of others

165. The judge may validate the report of the two arbitrators or appoint two arbitrators other than them by a grounded decision to perform the arbitration task anew, in accordance with the procedure mentioned in the two sections 163 and 164.

Differences between the two arbitrators

166. Where the two arbitrators differ, judge shall appoint others than them, or join to them a third arbitrator, who shall take the oath thereby.

Reconciliation being not possible

167. Where reconciliation is not possible, and dissension continues between the two spouses, the judge shall decree judicial divorce, in reliance on the arbitration's report, subject to the provisions of section 164.

Judicial divorce for injury or dissension

168. Where the judge decrees judicial divorce of the consummated wife for injury, or dissension, and all or most of the insult has been from the wife, she shall be divorced for money, to be assessed by the two arbitrators, and where all or most of the insult came from the husband, or has been from both of them, or the condition is unknown, she shall be divorced for no money.

Judicial divorce irrevocability for injury or dissension
irrevocable

169. Judicial divorce for injury or dissension shall be deemed irrevocable.

Chapter IV

Judicial Divorce for Ransom

Conditions of application for judicial divorce for ransom

170. A disobedient wife may apply for judicial divorce for ransom under the following conditions namely that: -

- (a) disobedience shall be proved in a judicial decree;
- (b) disobedience shall have continued for one full year, when the plaint is presented;
- (c) She shall offer in the application in consideration of the divorce what she is bound by of property, either in kind or cash;
- (d) she shall set forth in her suit that she is unable to satisfy rights of the husband against her, and she is prejudiced by staying in his wedlock, together with lapse of her rights, against him.

Suit of judicial divorce for ransom and husband's consent to ransom

171. Where the husband ratifies the suit of judicial divorce for ransom, and consents to the offered ransom, he shall be ordered to inflict divorce by himself; and where he refuses, it shall be inflicted by the judge.

Suit of judicial divorce for ransom and husband's non-acceptance of divorce

172. Where the husband admits the suit of judicial divorce for ransom, and does not accept the divorce, and does not show lawful interest in her continuous being in wedlock, or consents to divorce, and does not accept the amount of ransom, the judge shall send two arbitrators, in accordance with the provisions of sections 163 to 168 inclusive, for ending the state of dispute, as to such form, as they may approve.

Husband's denial of the suit of divorce for ransom

173. Where the husband denies the suit of divorce for ransom in its details, the wife shall be assigned to prove it against him. Where she proves it, divorce shall be ordered to be inflicted. Where he refuses to inflict the same, the court shall send two arbitrators for ending state of dispute, as to such form, as they may approve.

Chapter V

Judicial divorce for Insolvency or Non- maintenance Application for judicial divorce for non-maintenance

174. A wife may apply for judicial divorce from her husband for non-maintenance thereof, where he has no apparent property, refrains from maintaining her and is proved to be insolvent.

Application for judicial divorce for insolvency

175. Where wife applies for judicial divorce for insolvency alleging insolvency of the husband and he admits her allegation, the judge shall give him grace period not less than one month, and not exceeding two months. Where he becomes solvent, and maintains, otherwise, he shall inflict divorce against him.

Application for judicial divorce for insolvency and husband's denial

176. Where the wife applies for judicial divorce for insolvency, alleging the husband's insolvency and he denies, and alleges solvency, the judge shall fix a time for him to maintain therein or divorce. Where he does not do one of the two matters, he shall inflict divorce against him immediately after elapse of the time.

Application for judicial divorce for non-maintenance and denial of the husband

177. Where wife applies for judicial divorce for non-maintenance, alleging the husband's solvency and he denies and alleges to, and proves it, the judge shall give him a grace period not less than one month and not exceeding two months. Where he becomes solvent therein and maintains, otherwise he shall inflict divorce against him.

Application for judicial divorce for non-maintenance and husband alleging insolvency

178. Where wife applies for judicial divorce for non-maintenance, alleging the husband's solvency, and he alleges insolvency, and does not prove it, or he admits her allegation of solvency, the judge shall fix a time for him to maintain therein or divorce, otherwise he shall inflict divorce against him immediately after expiry of the time.

Proof of suit for divorce for non-maintenance

179. (1) Where the wife applies for judicial divorce for non-maintenance by her absent husband whose whereabouts is known and proves her suit, the judge shall notify him and give him a grace period of one month. Where he

does not send to her maintenance, and does not come to maintain her, the judge shall divorce her after her taking the oath.

- (2) The wife shall take the oath, mentioned in sub-section (1) as follows: -
- (a) that the husband has not left to her maintenance, a maintainer nor a maintenance agent;
 - (b) that: -
 - (i) nothing of her maintenance has reached her;
 - (ii) he has returned thereto neither covertly, nor overtly;
 - (iii) she has not consented to live with him without maintenance. (c) that she: -
 - (i) is entitled to maintenance from him;
 - (ii) does not know any property thereof, from which she derives her maintenance;
 - (iii) not know that wedlock between them has been broken by away.

Application for judicial divorce for insolvency and Husband's absence at unknown place

180 (1) Where the husband is absent in an unknown place or notices cannot reach him and the wife applies for judicial divorce for insolvency, the judge must inquire, give notice and search for the absent husband through his relatives and those who knows him, and by writing to the places where he is thought to be found.

(2) After ascertaining absence of the husband as set forth in sub-section (1) and proof of the grounds of judicial divorce for insolvency, the judge shall give him a grace period, not exceeding one month; where he does not return therewithin and does not send thereto her maintenance, she shall take the oath by order of the judge as mentioned in section 179 and divorce her therefrom.

(3) Where the wife is unable to prove absence as set forth in sub-section (1), due to her absence and absence of whoever knows her husband, the judge shall cause her to take the oath, as mentioned in section 179, and divorce her therefrom.

Divorce for insolvency or non- maintenance retractive

181. Divorce for insolvency or non-maintenance shall be inflicted retractive.

Cases of judicial divorce for insolvency or non- maintenance not inflicted

182. A wife shall not be divorced for insolvency or non- maintenance, in any of the following cases, namely: -

- (a) the husband having apparent property, whether the husband is present or absent;
- (b) the husband being able to provide full nourishment even though from coarse food and dress;
- (c) she is having married him, being aware of his insolvency and consenting thereto;
- (d) the relevant of the absent husband or a stranger having volunteered to provide maintenance.

Husband's return to his divorced wife for insolvency or non-maintenance permissible

183. A husband may return to his divorced wife for insolvency or non- maintenance upon the following conditions, namely that: -

- (a) the wife being consummated with upon judicial divorce;
- (b) husband's solvency being proved and his ability of sustainable maintenance;
- (c) the husband being bound not to refrain from maintenance in the future;
- (d) his return being prior to expiry of her waiting period (l'dda).

Return of the husband of the divorced for insolvency or non-maintenance

184. Where the husband of a divorced wife for insolvency or non-maintenance returns and proves that he has sent thereto her maintenance and she has received or he has left it therewith or she waives the same in the future, he shall not miss her, save upon being married and consummated by another man.

Chapter VI

Judicial Divorce for Absence, Missing and Confinement Application for judicial divorce for absence of husband

185. A wife may apply for judicial divorce for absence of her husband for one year and more, when she is aggrieved by his being distant, whether he has property from which she can satisfy her maintenance therefrom, or not.

Application for judicial divorce for absence and husband's place is known

186. Where the wife applies for judicial divorce for absence and proves her suit and husband's place is known, the judge shall fix a time therefor, and give him notice to divorce her, and where he does not come to stay with her

or move her to himself. Where the time elapsed, and he does not do, he shall divorce her therefrom, after taking the oath for the right of the absent husband.

Application for judicial divorce for absence and husband's place is unknown

187. Where the wife applies for judicial divorce for absence and proves her suit, and the husband's place is unknown, she shall be divorced without the adjournment and without notice after oath taking, for the right of the absent husband.

Belief of wife on her grievance

188. A wife shall be believed by her oath taking, and on her being aggrieved by absence of her husband and her fear of seduction.

Application for judicial divorce for missing

189. The wife of a missing husband may apply for judicial divorce from her husband, after the expiry of a period not less than one-year time, of the date of absence.

Application for judicial divorce for confinement

190. The wife of a husband, who is confined by a final sentence for a term of two and more years, may apply for judicial divorce from her husband, and no judgment shall be passed therefor to her, unless after the expiry of one year, of the date of confinement.

Divorce for absence, missing or confinement irrevocable

191. Divorce for absence, missing or confinement shall be irrevocable.

Chapter VII

Judicial Divorce for Eila'a, Zihar and Exchanged Imprecation Definition of Eila'a

192. Eila'a is the oath taken by husband not to copulate with his wife at all, or for four months or more.

Application for judicial divorce for Eila'a

193. A wife may apply for judicial divorce for Eila'a where the husband continues to be on his oath up to the expiry of four months.

Husband's desire to return

194. Where the husband is desirous of return, before judicial divorce, the judge shall give him an appropriate grace period; where he does not return, he shall divorce her from him.

Validity of retraction of judicial divorce for Eila'a

195. There shall be required for validity of retraction of judicial divorce for Eila'a that the same shall be by actual return, unless there is Sharia excuse, whereupon retraction shall be by word of mouth.

Definition of Zihar

196. Zihar is the husband's simile of his wife to a woman, who is permanently prohibited thereto, or to her back, or on organ thereof.

Validity of Zihar

197. Zihar shall be valid from every husband, whose divorce is irrevocable.

Application for judicial divorce for Zihar

198. A wife may apply for judicial divorce for Zihar from husband where he refrains from expiation and returning to his wife.

Definition of exchanged imprecation (Li'an)

199. Exchanged imprecation (Li'an) is special testimonies confirmed by oaths, taking place between the spouses, before the judge, sealed by imprecation on the husband side, and by wrath on the wife's side.

Validity conditions of exchanged imprecation (Li'an)

200. There shall be enquired for validity of exchanged imprecation (Li'an) that:

- (a) the two spouses shall be (Mukalafin) subject to Sharia obligations, not punished by Hud for libel (Qazf), unless they repent;
- (b) their marriage contract shall be valid and subsisting de facto, or de jure, where the exchanged imprecation (Li'an) is by reason of libel (Qazf) of adultery;
- (c) the husband has no Sharia evidence;
- (d) exchanged imprecation (Li'an) shall be before the judge and upon his permission;
- (e) the libellant husband shall be sighted alleging seeing her adultery; provided that a blind may exchange imprecation (Li'an) by denial of the child;

- (f) the two imprecators shall be bound by order, expression and number of testimonies;
- (g) affiliation of denied child is possible.

Separation by reason of exchanged imprecation (Li'an)

201. The judge shall separate between the spouses after exchanged imprecation (Li'an) is made. Irretractiveness of separation by reason of exchanged imprecation (Li'an)

202. Separation by reason of exchanged imprecation (Li'an) shall be irrevocable divorce.

Retraction separation by reason of exchanged imprecation (Li'an)

203. The two imprecators may retract, after their judicial divorce, by fresh contract and dowry, where husband belies himself and the libel (Qazf) Hud is inflicted thereon.

Part IV

Rescission Reasons of rescission

204. Marriage contract shall be rescinded, where one of its pillars is upset, or it contains a prohibitive which is inconsistent with its requirements.

Rescission upon contract to one of the prohibited degrees, or occurrence of what prevents its subsistence

205. Marriage contract shall be rescinded, where concluded to one of the prohibited degrees, or there occurs therein such as may prevent its Sharia subsistence.

Parties to suit to have truce

206. The judge shall order truce between the parties to the suit, pending passing judgment in the rescission suit.

Part V

Effects of Separation Between Spouses Waiting period (I'dda)

207. (1) Waiting period (I'dda) is a period of awaitment, mandatorily spent by a woman, without marriage, following separation.

(2) Waiting period (I'dda) shall commence, from occurrence of separation even though the woman does not know the same.

(3) Waiting period (I'dda) shall commence in case of copulation upon, suspicion, since the truce.

I'dda of a divorced wife and a widow at the matrimonial home.

208. A divorced wife and a widow shall await in I'dda at the matrimonial home, allocated before separation.

Chapter I

Waiting period (I'dda) of Widow I'dda of widow

209.(1)A widow, widowed in a valid marriage shall wait for four months and ten days, if not pregnant.

(2) I'dda of a pregnant widow, shall expire by delivery, or abortion of a fetus of clear creation.

(3) Wife of suspicious or defective consummated marriage, shall await divorce I'dda, where the husband dies, unless she is pregnant, thus her I'dda shall be by delivery.

Chapter II

Waiting Period (I'dda) of an Unwidowed Wife I'dda of an unwidowed wife

210. (1) I'dda of a pregnant wife shall be by delivery, or abortion of a fetus of clear creation.

(2) I'dda of a non-pregnant wife shall be by any of the following ways, namely: -

(a) three full menstruations;

(b) three months for whoever has not originally menstruated, or has reached menopause, and ceased menstruation. Where she sees menstruation prior to its expiry, she shall resume the waiting period for three menstruations;

(c) one year for wife of menorrhagia, where she has no known menstruation. Where she has menstruation, which she remembers it shall be followed in calculating I'dda;

(d) minimum of the two periods, from three menstruations, or one year for the one whose menstruations ceases prior to menopause.

(3) Menopause shall be fifty-five years.

Maximum waiting period (I'dda) for non-suckling wife

211. The waiting period (I'dda) for non-suckling wife shall not exceed one year in all cases.

Chapter III

Occurrence of an I'dda on an I'dda

Death of husband during the waiting period (I'dda) for retractive divorce

212. Where the husband dies, the woman is in the I'dda of retractive divorce, she shall shift to death waiting period, and what has expired shall not be calculated.

Death of husband in I'dda of irretractive divorce

213. Where the husband dies, while the woman is in the waiting period (I'dda) of irretractive divorce, she shall complete the same and shall not be bound by the death waiting period (I'dda) unless it is the divorce of a person escaping inheritance in death illness, whereupon she shall await the maximum of two times.

Book III

Capacity and Guardianship Chapter I

General Provisions Full capacity

214. Every person shall be of full capacity, unless the law prescribes otherwise.

Maturity age

215. Maturity age shall be eighteen years.

Person of deficient capacity

216. A person shall be of deficient capacity, where he is: -

- (a) a distinguishing infant,
- (b) Imbecile.

Incapacitated person

217. A person shall be incapacitated, where he is: -

- (a) Undistinguishing infant,
- (b) Insane.

Minor

218. A person shall be minor, where he does not attain the age of maturity, and there shall have his rule every incapacitated person or person of deficiency.

Who assumes the minor's affairs?

219. There shall assume the minor's affairs, and whoever may have his rule, whoever may represent him, and shall be known, as guardian, trustee or custodian.

Chapter II

The infant and his Dispositions

Non-discriminating, and discriminating infant

220. An infant shall be discriminating, or non-discriminating as follows: -

- (a) a non-discriminating infant is whoever has not completed ten years of his age.
- (b) a discriminating infant is whoever has completed ten years of his age.

Dispositions of undistinguishing and distinguishing infant

221. Dispositions of: -

- (a) an undistinguishing infant shall be absolutely void;
- (b) a distinguishing infant which are financial shall be valid, whenever they are purely beneficial for him and void, whenever they are purely prejudicial thereto;
- (c) a distinguishing infant, which range between benefit and prejudice, shall be voidable for interest of the infant. The right to adhere to avoidance shall lapse, where the infant ratifies the disposition, after his attaining the age of majority, or where ratification is issued by his guardian, or the judge, in accordance with the law.

Permission of guardian to a distinguishing

Infant to manage his property

222. The guardian of a discriminating infant may:

- (a) absolutely permit him to manage his property or any part thereof,

where he observes his good disposition;

(b) withdraw or restrict the permission, whenever there transpires thereto that the interest of the distinguishing infant requires the same.

Permission of trustee to a distinguishing infant to manage his property

223. The trustee may, after the judge's assent, permit a distinguishing infant to manage his property or any part thereof, where he observes his good disposition.

Permitted infant

224. A permitted infant shall be deemed having full capacity in what he has been permitted therein.

Presentation of periodical account on dispositions of permitted discriminating infant

225. A discriminating infant permitted on part of the trustee shall present to the judge periodical account on his dispositions.

Revocation and restriction of permission

226. The judge may revoke or restrict the permission where interest of the discriminating infant requires the same.

Chapter III

Majority and being Major Majority

227. There shall be major whoever has completed majority age, unless interdicted for one of the defects of capacity.

Right of minor to claim his rights

228.(1) A minor shall, after majority, have the right to claim his rights, which have been lost by reason of the injurious dispositions of his trustee.

(2) The right provided therefor in sub-section (1) shall lapse after the expiry of one year, of the date of the minor conducting his business, as a result of his majority.

Chapter IV Defects of Capacity

The Insane, Imbecile, Simpleton and Spendthrift

229. Defects of capacity are insanity, imbecility, simplicity and spendthriftiness as follows:

- (a) an insane is one who is devoid mind absolutely, or intermittently;
- (b) an imbecile is the person of meagre perception, confused speech, and of defective measure;
- (c) a simpleton is he, who is defrauded in his financial transactions for the easiness of cheating him.
- (d) a spendthrift is he, who squanders his property, on what is useless.

Dispositions of the insane, imbecile, simpleton and spendthrift

230. (1) The financial dispositions of an insane, while he is sane; and before his interdiction, shall be valid and void as to otherwise.

(2) Dispositions of an imbecile, before his interdiction shall be valid, where the state of imbecility is not stable, at the time of contracting, and void as to otherwise.

(3) Dispositions of a simpleton, before his interdiction, shall be valid, unless they are the result of exploitation; and there shall be as such the dispositions of a spendthrift, before his interdiction, unless they are the result of exploitation, or commission.

(4) The provisions to relating to the disposition of a discriminating infant shall apply to the dispositions of the spendthrift and the simpleton, made after their interdiction.

The real estate of an interdict

231. The court shall communicate with the competent land authorities to attach the real estate of the interdict, and prevent disposal thereof, save upon permission of the competent court.

Right of an interdict institute a suit to lift the interdiction

232. Interdicted person shall have the right to litigate for lift of his interdiction.

Part II Guardianship Chapter I

General Provisions

Definition of guardianship of life and property

233. Guardianship is guardianship of life and of property according, as follows: -

- (a) guardianship of life, which is caring for whatever has relation to the person of the minor, and whoever of his rule;

(b) guardianship of property is caring for whatever has relation to the property of the minor and whoever of his rule.

Guardianship of life

234. Guardianship of life shall be for the father, then for the consanguineous relative by himself, according to the order of inheritance.

Guardianship of property

235. Guardianship of property shall be for the father, then for the trustee of the father, then the paternal grandfather and then for the trustee of the grandfather.

Conditions of the guardian

236. A guardian shall be Muslim adult, sane, trustworthy and able to carry out the requirements of guardianship.

Withdrawal of guardianship

237. Guardianship shall be withdrawn, where one of the conditions mentioned in section 236 is not satisfied.

Chapter II

Guardianship of Property Guardianship of the minor's property

238. Guardianship of property of the minor shall be as keeping, disposition and investment.

Guardian's dispositions presumed sound

239. Guardian's dispositions shall be presumed sound in any of the following cases, namely: -

- (a) contracting in the name of his ward and dispose of his property;
- (b) Carrying on trade for the account of his ward and shall not continue the same, save in case clear benefit;
- (c) acceptance of legitimate donations for his ward's interest, where they are free of any unjust obligations;
- (d) spending out of his ward's property on those whose maintenance he is bound thereby.

Guardian's dispositions not presumed sound

240. Dispositions of a guardian shall not be presumed sound unless interest of his ward is proved therein and this is in any of following cases, namely: -

- (a) his purchase of his ward's property for himself;
- (b) sale thereby of: -
 - (i) his property to his ward;
 - (ii) the property of his ward to invest its price for himself.

Prevention of guardian to dispose of real estate

241. A guardian shall be prevented from the disposal of real estate, save after the judge's permission, after the realization of interest.

Guardian's disposition avoided

242. There shall be void every disposition conducted by the guardian for his ward, where it results into injury.

Chapter III

Trustee Appointment of trustee

243. (1) The father or proper grandfather may appoint trustee for his minor, or expected child, and he may retract the trusteeship thereof, even though he is bound not to retract.

(2) Where the minor has no select trustee, the judge shall appoint for him a trustee to manage his affairs, giving due regard therein to the interest of the minor.

Conditions of trustee

244. A trustee shall be required to be: -

- (a) of full capacity;
- (b) honest;
- (c) capable of performing the trusteeship requirements;
- (d) not convicted of the offence of theft, breach of trust, cheating, forgery or one of the offences inconsistent with morals and honour;
- (e) not adjudged of bankruptcy, until he is reinstated;
- (f) not adjudged of removal from a previous trusteeship;
- (g) not an adversary in a judicial dispute with the minor, and there is no enmity between them.

Restriction of trustee to the conditions and tasks assigned to him

245. The trustee shall be restricted to the conditions and tasks assigned to him by the trusteeship deed, unless they are in contravention of the law.

Type of trustee and multiplicity of trustees

246. (1) A trustee may be male or female, alone or several and independent.

(2) Where the trustees are several, the judge may limit trusteeships to one of them, as the interest of the minor may require.

Trustee's acceptance required

247. (1) Execution of trusteeship shall depend on the trustee's acceptance.

(2) Trustee's exercise of his tasks shall be deemed acceptance thereby of trusteeship.

Trustee's waiver of trusteeship

248. The trustee may waive trusteeship upon the judge's approval.

Chapter IV Dispositions of Trustee

Management of minor's property

249. A trustee shall manage the property of the minor and care therefor, and shall exert therein such care, as he may exert in management of the property of his own children.

Subjection of trustee's dispositions to judge's control

250. Dispositions of the trustee shall be subject to the control of the competent judge.

Trustee bound to present periodical accounts

251. The trustee shall be bound to present periodical accounts on his dispositions managing the property of the minor as to such manner, as may be specified by the competent judge.

Business that trustee does not carry out without the judge's permission

252. The trustee shall not carry out the following business save upon permission of the competent judge and the business is: -

(a) disposal of the: -

(i) property of minor by sale, purchase, barter, partnership mortgage or any other type of dispositions, which transfer ownership, or entail a corporeal right;

(ii) debentures and shares or any dividends thereof or in the movable property, unless it is little or feared to be damaged;

(b) assignment of debts of the minor, or acceptance of assignment thereto;

(c) investment of the minor's property for his account;

(d) borrowing for the minor;

(e) hire the real estate of the minor;

(f) acceptance of donations restricted by condition, or its rejection;

(g) spending out of the property of the minor on those the maintenance of whom he is bound thereby;

(h) satisfaction of obligations, from the estate, or from the minor;

(i) admission of right on the minor, where it is of trustee's work;

(j) reconciliation and arbitration;

(k) waiver of the suit and non-use thereby of the modes of contest, whether normal or appellate.

Prevented dispositions

253. A trustee shall be prevented to carry out the following dispositions, namely: -

(a) purchase of something of the minor's property or its hire to himself, his spouse, one of their ascendants or descendants;

(b) sell to the minor something of his own ownership, his spouse or one of their ascendants or one of their descendants;

(c) lend the money of the minor;

(d) admission of right on the minor, where the same is not of his work.

Fee of trustee

254. A trustee may request fee for his business, and the same shall be specified as from the date of request.

Chapter V

Termination of Trustee's or Custodian's Mandate Cases of termination of the trustee's mandate

255. A trustee's mandate shall terminate in any of the following cases, namely: -
- (a) his death or loss of his capacity or deficiency thereof;
 - (b) proof of his missing or absence;
 - (c) admission of his application for waiver his trusteeship;
 - (d) difficulty of his performing the duties of trusteeship;
 - (e) proof of majority of the minor;
 - (f) lifting the interdiction from the interdicted person;
 - (g) restoration of the trustee's ward of his capacity;
 - (h) death of minor;
 - (i) end of the state of missing or absence.

Removal of trustee

256. A trustee shall be removed, where any of the condition provided therefor in section 244 is not satisfied.

Delivery of minor's property

257. The trustee shall, upon termination of his task, deliver the property of the minor to whoever may be concerned with the matter, under supervision of the competent judge, within a maximum period of thirty days, of the date of termination of his task.

Death of trustee

258. Where the trustee dies, his heirs, or whoever may lay his hand on his estate, shall immediately inform the competent judge thereof, to take such measures, as may secure protection of rights of the minor.

Chapter VI

The Absent and the Missing Definition of the absent and the missing

- 259.(1) An absent is the person whose place of residence is unknown, or to whom notices cannot be served.
(2) A missing is the absent person, who is unknown whether he is dead or alive.

Custodian for management of the property of the absent or missing

260. Where the absent or missing person has no agent, the judge shall appoint therefor a custodian to manage his property.

Stock taking of the absent or missing person's property

261. The property of the absent or missing person shall be stock taken, upon appointment of the custodian thereof, and shall be managed in accordance with management of the minor's property.

Search for the missing person

262. The judge shall search for the missing person to know whether he is alive or dead, before his death is decreed.

Termination of missing of the missing person

263. Missing of a missing person shall terminate in any of the following cases: -
- (a) his return alive;
 - (b) proof of his death;
 - (c) decree of his death.

Cases of decreeing death of the missing

264. The judge, may decree death of the missing in any of the following cases: -
- (a) proof of his death;
 - (b) his missing in circumstances in which: -
 - (i) no perishing prevails, and expiry of four years at least, of the date of his missing;
 - (ii) his perishing prevails, and expiry of two years thereof.

Date of death of missing person

265. Where judgment is passed of death of the missing, he shall be deemed dead from the date
- (a) his missing, in others, proprietary right;
 - (b) judgment of his death in his own property.

Appearance of the missing alive

266. Where death of the missing is decreed, then he appears alive, this shall entail that: -
- (a) he shall be entitled to what remains of his property with his heirs;
 - (b) his wife shall return to his wedlock, unless she marries, and consummation occurs.

Book IV

Gift, Legacy and Endowment Part I

Gift Definition of gift

267. (1) Gift is vesting ownership of property, or proprietary right on another, during the life of owner, without consideration.

(2) Gift may be for consideration, such as where the donor stipulates for the donee, financial consideration, or carry out an obligation.

Conclusion and completion of gift

268. Gift shall be concluded by offer and acceptance and completed by delivery.

Provisions of offer and acceptance

269. (1) Offer of gift shall be valid by whatever gratuitous vesting of ownership, of word of mouth, writing or intelligible sign.

(2) Gift shall be concluded by taking.

What constitutes delivery

270. (1) Receipt in gift shall take the place of acceptance by word of mouth.

{2} Receipt is de facto and de jure as follows: -

(a) de facto, such as living in gifted real estate, or hiring it, or taking possession of the gifted property and dispose thereof by what indicates ownership;

(b) de facto receipt of movable property shall be made by possession;

(c) de jure receipt of real estate, such as giving up leading to take possession without encumbrance and registration with the competent authorities and receiving the key of the house.

(3) Gift shall be complete by offer, where the gifted article is in the hand of donee.

Receipt of gift for minor

271. (1) Where the donor to the minor is other than the guardian, or trustee or instructor, gift shall be complete by being received by one of them.

(2) Gift for a minor shall be complete by acceptance alone, where the donee is the minor's guardian, or trustee or instructor.

(3) A discriminating minor may accept and receive a gift, even though he has a guardian.

Gift of mother or one of the Spouses to the other of the house effects

272. Gift of the mother to her young child, or one of the spouses to the other of one of the house effects, or animal, shall be valid where

the donor attests the gift, even though he does not lift his hand from the gifted article.

Conditions of the donor

273. A donor shall be required to be: -

(a) of full capacity, adult, sane, voluntary, non-interdicted and not on the death bed;

(b) the owner of the gifted article.

Conditions of the donee

274. A donee shall be present, for gift shall not be for the non-present, or the fetus.

Conditions of gifted article

275. A gifted article shall be required to be: -

(a) valued property;

(b) present at the time of gift;

(c) owned by the donor;

(d) known and designated.

Gift of co-owned property of undivided shares

276. Gift of co-owned property of undivided shares, whether free, or connected to another, the connection of adjacency, or neighbourhood.

Gift of shares, debentures and financial rights

277. Shares, debentures and otherwise of financial rights may be subject to gift.

Consideration in conditional gift

278. {1} Subject to the exclusion, set out in section 267 {2}, consideration in the conditional gift, shall be known, otherwise each of the two parties may rescind the contract, even after receiving the gifted article, unless they have no agreed to designate the consideration prior to rescission.

{2} Where the gifted article, in a conditional gift, perishes or is disposed of by donee, prior to rescission, he shall refund its value on day of receipt.

Gift of person on death bed

279. The provisions of legacy shall apply to the gift of a person on death bed.

Retraction of gift

280. A donor may retract the gift: -

- (a) before receipt, without consent of the donee;
- (b) after receipt, upon consent of the donee; and where he does not consent, the donor may rescind the gift, by acceptable reason, unless there is impediment of retraction.

Acceptable reasons for rescission of the gift

281. Subject to the provisions of section 282, there shall be deemed acceptable reason for rescission and retraction of the gift that: -

- (a) the donor is unable to affect his maintenance or maintenance of whoever he may be bound to maintain;
- (b) the donor who has no child, is endowed, after the gift, with a child, who remains alive up to the date of retraction or has a child, whom he believes, to be dead, while he is alive.
- (c) The donee breaches his obligations, stipulated in the contract, without justification, or breaches what he is bound by towards donor, or one of his relatives, in such way that such contravention is a great thanklessness on his part.

Bars against retraction of gift

282. There shall be deemed a bar against retraction of gift that: -

- (a) the gift is from one of the two spouses to the other or to a uterine relative of prohibited degree, unless there is entailed thereto differentiation between those without justification;
- (b) the donee disposes of the whole gifted article by a disposition which transfers ownership, where the disposal is in part of the gifted article, he may retract the remainder.
- (c) the gifted article continuously increases, or its capacity is altered by an increase which changes the name thereof;
- (d) one of the two parties to the gift dies after receipt;
- (e) the gifted article totally perishes in the hand of the donee; where it is partial, the remainder may be retracted;
- (f) the gift is for consideration;
- (g) the gift is for a charitable body, or the creditor gifts the debt to the debtor.

Effects of retraction of the gift

283.(1) Retraction of the gift shall, by consent, or judgment, be deemed avoidance of the contract effect.

(2) A donee shall not return what he has benefited thereby of the gifted article to the donor, save from the date of retraction, or the date

(3) A donee may recover such necessary expenses, as he may have spent; as for the un-necessary expenses he shall not recover therefrom, save such as may have increased the value of gifted article.

Grounds of avoidance of the gift

284. A gift shall be avoided in any of the following cases, namely -

- (a) loss of one pillar or condition, provided therefor in this Act;
- (b) delay of its possession until the property of the donor is surrounded by debt, even though the debt has occurred after the gift.

Liability for perishing of the gifted article

285. (1) Where the donor recovers the gifted article without consent or judgment, he shall be liable for its perishing whatever the cause thereof may be.

(2) Where judgment is passed for retraction of the gift, and the gifted article perishes in the hand of donee, after giving him notice of receipt, the donee shall be liable for perishing whatever the cause thereof may be.

Part II

Legacy Chapter I

General Provisions Definition of legacy

286. Legacy is a disposition in the form of donation, with effect after death of the testator.

Effectiveness of legacy

287. Subject to the provisions of this Act, legacy shall be effective within the limits of one-third of the estate of the testator after payment of the rights, relating thereto; and shall be valid in what exceeds one-third, within the limits of the share of whoever has ratified the same of the major heirs.

Death bed disposition

288. The provisions of legacy shall apply to every disposition conducted on death bed, with the aim of donation or favoritism whatever the name given thereto may be.

Chapter II

The Two Pillars and Conditions Pillars of legacy

289. Pillars of legacy are the following: -

- (a) the form;
- (b) the testator;
- (c) the legatee;
- (d) the bequeathed.

Form of legacy

290. Legacy shall be concluded by word of mouth or writing. Where the testator is unable thereto, then by intelligible sign.

Legacy subject to condition

291. Where legacy is subject to a condition, which is inconsistent with Sharia aims, or the provisions of this act, the condition shall be avoided, and the legacy shall be valid.

Hearing and proof of suit of legacy

292.(1) No legacy suit, shall be heard on denial or retraction thereof, save by written evidence.

(2) In case of necessity legacy may be proved by testimony.

Capacity of the testator

293. (1) Legacy shall be valid from whoever may have the capacity of donation, even though conducted on death bed.

(2) Where the testator is interdicted for spendthriftness, his legacy may be valid in charitable aspects.

Amendment and retraction of legacy

294. (1) A testator may amend or retract the legacy totally, or in part.

(2) The testator's devolution of the particular property he has bequeathed shall be deemed retraction thereby of the legacy.

Conditions of the validity of legacy in respect of the legatee

295. For validity of legacy in respect of the legatee, there shall be required that: -

- (a) he shall be present at the time of legacy, de facto, or de jure;
- (b) he shall not be unknown;
- (c) he shall not be a sinful body;
- (d) he shall not be a murderer of the testator.

Difference of legatee from the testator in religion and nationality

296. Where the legatee is different in religion or nationality, he may be bequeathed.

Legacy for an heir

297.(1) No legacy shall be for an heir, save it is ratified by the rest of the heirs.

(2) Where some of the heirs ratify the legacy, it shall be effective in their share.

(3) There shall be required for the validity of ratification of the legacy that: -

- (a) it shall be after the death of the testator;
- (b) the ratifier shall be from those capable of donation;
- (c) the legatee shall be aware of what the testator has bequeathed.
- (4) The legatee being an heir, or not, shall be given due regard at the time of the testator's death, and not at the legacy time.

Legacy for an identified person, the fetus, the minor the interdicted and the unidentified

298.(1) There shall be required for legacy for an identified person, his acceptance thereof after the testator's death, or during his life and his continuous acceptance after death of the same.

(2) Where the legatee is a fetus, minor or interdicted, whoever has guidance of his property may accept the legacy or may reject the same after the judge permission.

(3) The legacy for an unidentified person shall not depend upon acceptance and shall not be rejected by rejection of any one.

(4) Acceptance or rejection to the bodies, institutions and facilities shall be from those who represent them legally; where they have no representative, the legacy shall be binding thereon.

Acceptance of the legacy

299.(1) Acceptance or rejection of the legacy shall not be given due regard, save after the testator's death.

(2) Acceptance of the legacy shall not be required immediately upon the testator's death.

(3) Silence of the legatee for thirty days, after his knowledge of the legacy shall be acceptance thereof.

Rejection of the legacy

300. The legatee of full capacity may reject the legacy totally, or in part.

Death of the legatee

301. Where of the legatee dies, after the death of the testator without acceptance or a rejection being issued thereby, this right shall be transferred to his heirs.

Ownership of the bequeathed, its division and benefiting thereby

302.(1) The identified legatee shall own the bequeathed, after the death of the testator.

(2) The bequeathed shall be divided equally, where the legatees are several, unless testator stipulated disparity.

(3) The heirs of the testator shall benefit by the bequeathed until there is found one, who is entitled there.

Legacy for a category not capable of limitation in the future

303.(1) The legacy for a category not capable of limitation in the future shall include those present thereof on the day of the testator's death de facto, or de jure.

(2) Where the presence one of any of the legatees is hopeless the bequeathed shall return as inheritance.

Benefiting of those present of the unidentified category capable of limitation by the bequeathed

304. Those present of the unidentified category capable of limitation shall, before identifying them benefit by the bequeathed and change of the beneficial shares whenever there occurs among them birth, or death.

Division of yield of the bequeathed

305. The yield of the bequeathed shall be divided for those unidentified, and not capable, of limitation, among those present thereof, and nothing to those who have died before division.

Application of rules of the unidentified legatee's capable of limitation to the identified legatee

306. There shall apply to an identified legatee's in the first instance, the rules of the unidentified legatee capable of limitation, where they have been included in one legacy.

Sale of the bequeathed to the unidentified

307. The bequeathed shall be sold to the unidentified, where it is feared to be lost, or decrease of value, and there shall be purchased by its price what the legatees may benefit thereby.

Spending the legacy in aspects of benevolence and charitable and scientific institutions

308.(1) There shall be spent on aspects of benevolence and the charitable, and scientific institutions, on their interests, such as management, construction, residents and otherwise of their affairs, unless the spending is designated by custom, or implication.

(2) The yield of the bequeathed shall be spent on the expected institutions to the nearest similar thereto, pending the existence thereof.

Conditions of the bequeathed

309. There shall be required of the bequeathed to be owned by the testator and the object thereof shall be lawful.

The bequeathed co-owned in undivided shares

310. (1) A bequeathed shall be co-owned in undivided shares, or definite.

(2) A co-owned bequeathed in undivided shares shall include the entire testator's current and future property.

The definite bequeathed

311.(1) A definite bequeathed shall be real estate, moveable property, fungible or ad valorem, in kind or use.

(2) Where a testator bequeaths a definite article to a person, and then bequeaths the same to another, it shall be divided equally between them unless he proves that he has intended to waive the first legacy.

The bequeathed which is use or benefit

312. A bequeathed may be use or benefiting by a real estate or moveable property for a definite or indefinite period.

The bequeathed being less or more than one-third

313. {1) Where the value of the definite property, the bequeathed use, or benefit of which for benefit is less than one- third of the estate, then the corpus shall be delivered to the legatee to benefit thereby, according to the legacy.

{2) Where the value of the definite property, the bequeathed use, or benefit of which is more than one-third of the estate, the heirs shall

be given the option either to ratify the legacy or give the legatee what is equivalent to one-third, of the estate.

Use and utilization of the definite property

314. The legatee to whom is bequeathed the use of a definite property may use and utilize the same even though otherwise than the state set forth in the legacy on condition of non-prejudice to the corpus.

Chapter III

Legacy by Instatement Definition of the Instatement

315. Instatement is a legacy to join a non-heir person to the testator's inheritance, and with a definite share of the inheritance.

Entitlement of the instated

316. The instated shall be entitled to the like share of whoever he is instated in his position, whether male or female within the limits of one-third of the estate.

Chapter IV

Cases of Avoidance of Legacy Cases of avoidance of the legacy

317. The will is nullified by the following cases:

- (a) retraction by the testator of his legacy;
- (b) loss by the testator of his capacity, up to his death.
- (c) death of the legatee during the testator's life;
- (d) the legatee acquiring the capacity of an heir of the testator;
- (e) the legatee rejecting the legacy after the testator's death;
- (f) the legatee killing the testator by willful aggression, whether the legatee is the principal, an accomplice or causing; on condition that the killer, upon committing the act, shall be sane and has attained the limit of criminal responsibility;
- (g) disposal by the testator of the bequeathed in such way, as may get it out of his ownership or change its description;
- (h) perishing of the definite bequeathed, or being vindicated on the part of others;
- (i) Apostasy by the testator or legatee from Islam unless he returns thereto.

Chapter V

Competition of Legacies competition

318.(1) Competition in legacies occurs where the same is by more than one- third for two and more, and the heirs do not ratify the addition.

(2) Where competition occurs in legacies; the one-third shall be divided between the legatees, as creditors at the proportion of their shares.

Part III Endowment

Application of the provisions of special laws to endowment

319. The provisions of special laws shall apply, with respect to endowment, subject to the principles provided therefor in this Act.

Definition of endowment

320. Endowment means allocation of property in Almighty Allah's ownership as a rule, and almsgive its use now and in reversion.

Form of endowment

321. Form of endowment shall be required that it shall: -

- (a) be executed;

- (b) be perpetual;
- (c) not be subject to a condition inconsistent with the endowment rule.

Divisions of endowment

322. Endowment shall be divided into three divisions, as follows: -

- (a) charitable endowment, the benefits of which are allocated to charity in the first instance;
- (b) kinsfolk endowment, the benefits of which are allocated in the first instance to the endower himself, or any definite person, or persons then to charity body, upon definition of the beneficiaries;
- (c) joint endowment, the benefits of which are allocated to posterity and the charity body together.

Conditions of validity of endowment

323. For endowment validity there shall be required that the endower shall: -

- (a) be adult, sane and has the capacity of donation;
- (b) Not be interdicted for spendthrift or simplicity.

Conditions of effectiveness of endowment

324. There shall be required for endowment effectiveness that the endower shall not be: -

- (a) interdicted by reason of religion;
- (b) in the death bed.

What may be endowed

325. (1) Every valuable property may be endowed, whether it is a real estate or moveable or what is customarily endowed.

{2} The endowed extent of the real estate shall be partitioned or independent by itself and not co-owned in undivided shares, where it is a mosque or cemetery.

The ten conditions right

326. (1) The endower may stipulate for himself, or others the right of giving, deprivation, joinder, disjoinder, increase and decrease, change and alteration, substitution and exchange and he or such others, may use this right, as set forth in attestation of the endowment.

(2) The endower may change in the aspects of expenditure of the endowment or its conditions even though he has deprived himself in the first instance.

Attestation of the endowment and change of aspects of its expenditure or conditions

327. The endowment and the change in aspects of its expenditure, or conditions shall be made by an attestation before the competent court, in accordance with the Sharia ordinances.

Registration of real estate endowment

328. Where the endowed is a real estate, registration shall be made at such body, as may be specified by the laws, pertaining thereto, in application of the law.

Appointment and change of the endowment trustee (Nazir)

329. The endower may appoint and change the endowment trustee {Nazir} even though he doesn't stipulate this for himself, at the time of endowment.

Mosque endowment

330. (1) No change shall be made in the mosque endowment, and nor in what it has been endowed for.

(2) The provisions of sections 327 and 328 shall not apply to the mosque endowment where it is already established, and the rites have been performed therein.

Unconsidered conditions

331. (1) There shall not be considered every condition, which is in contravention of Sharia ordinance, or imposes disruption of the interest of the endowment, or loss of the interest of beneficiaries.

(2) Where endowment is subject to an invalid condition, the endowment shall be valid, and the condition shall be void.

Understanding and interpretation of the endowment conditions

332. {1} The condition of the endower shall be like the Legislators text in understanding and denotation.

{2} The court, upon requirement, may interpret the endower's conditions, in such way, as may be compatible with the denotation thereof.

Post humous endowment

333. The provisions of legacy shall apply to post humous endowment.

Exchange of the endowed

334. There shall be required for the validity of substitution and exchange that: -
- (a) there shall not be gross deceit in endowment by substitution;
 - (b) there shall not be accusation in substitution;
 - (c) the substitute and the substituted shall be identical in species, where the endower stipulates the same;
 - (d) exchange shall not be by sale of the corpus for a price, which is a debt of the purchaser from the exchanger.

The beneficiary conditions

335. For the validity by the endowment of the beneficiary, there shall be required that the same shall be: -
- (a) a pious act in the ordinance of Islam;
 - (b) definite by name, or description;
 - (c) present, where defined by name.

The endowed conditions

336. For the validity by the endowment of the endowed there shall be required that the same shall be: -
- (a) Known at the time of endowment, in such way, as may negate ignorance;
 - (b) Absolutely owned by the endower without option therein, at the time of endowment.

The endowment division

337.(1) Endowment shall not be divided as ownership division among the beneficiaries; and may be subject to adaptation by mutual consent.

(2) Where the endowed is a co-owned common between the endowment and another owner, or common between two endowments, the division may be made between the endowment and the common owner, or between the two endowments, upon permission of the competent court.

Removal of the endowment trustee (Nazir)

338. The court may upon application of those concerned, remove the trustee (Nazir), or supervisor of the endowment, even though he is the endower, or the one appointed on his part, where his treason is proved, or arising of a Sharia impediment to his being assigned; and may also join others to him, where he is unable to perform his task alone; and where the assigned, or supervisor is appointed on part of the court it may remove him, where it deems there is what calls therefor, and may likewise temporarily assign another one pending the final determination of the removal matter.

Retraction of the charitable endowment

339. No retraction of the charitable endowment shall be made.

Retraction of the kinsfolk endowment

340. An endower may retract the whole or part of his kinsfolk endowment, if retraction shall be by a Sharia attestation, passed by the competent court.

Cases where no retraction of the endowment shall be made

341. No retraction of endowment shall be made in any of the following cases, namely: -

- (a) death of the endower, the heirs have no right to retract of the testator's endowment where it is made satisfying its conditions;
- (b) receipt of the endowed corpus by all or some of the beneficiaries, or whoever may deputize therefor, or its returns in the life of the endower, if there shall not be deemed bar to retraction, the seizure by the endower of the corpus, or returns for himself, throughout his life.
- (c) Passing a judicial decree of the binding of a debtor endowment in determination of a dispute thereon.

Dissolution of kinsfolk endowment

342. The court may dissolve the kinsfolk endowment in any of the following cases, namely: -

- (a) difficulty of benefiting thereby, for the great number of beneficiaries;
- (b) few returns of its yield, in such form, as may not achieve the purpose of the endower for establishment of the endowment;
- (c) End of its corporeal in ruin and the difficulty of their repair by reason of non-co-operation, or arising of dispute among the beneficiaries;
- (d) deprivation by the endower of part of his heirs of the yield of the endowment or favoring part of them by the allowed extent.

(159)

Distribution of the estate in case of dissolving the kinsfolk endowment

343. Estate shall be is distributed, in case of dissolving the kinsfolk endowment after the endowed, according to the Sharia ordinance, in respect of the heirs; and in respect of the beneficiaries, it shall take the rule of legacy.

Book V

Inheritance Part I

General Provisions Definition of the estate

344. The estate is such property benefits and financial rights, as may be left by the deceased.

The rights relating to the estate

345. There shall relate to the estate rights, part of which are precedent to the others, arrangement: -

- (a) expenses of preparing the deceased for burial;
- (b) repayment of the deceased's debts;
- (c) the legacy;
- (d) giving the rest of the estate to the heirs.

Inheritance definition

346. Inheritance is the destined transfer of the property, benefits and financial rights by the owner's death to whoever may be entitled thereto.

Inheritance pillars

347. Inheritance pillars are: -

- (a) the testator;
- (b) the heir;
- (c) the estate.

Reasons of inheritance

348. Reasons of inheritance are marriage and relationship.

Inheritance conditions

349. Inheritance conditions are: -

- (a) death of the testator, de facto, or de jure;
- (b) the heir's life at the death of the testator, de facto, or de jure;
- (c) knowledge of the body conducive to inheritance.

Deprivation of the inheritance

350. There shall be deprived of inheritance everyone, who kills his testator by willful aggression whether he is a principal, accomplice or causing; on condition that the killer, upon committing the act shall be sane and has attained the limit of criminal responsibility.

Religion difference

351. No inheritance shall be with difference of religion.

Death of two or more of whoever have inheritance between them

352. Where two or more die and have inheritance between them; and the death of the precedent or the subsequent, is unknown, no one thereof shall be entitled in the estate of the other.

Part II

Classes of Heirs and their Rights Chapter I

General provisions Aspects of inheritance

353. Inheritance shall be by Sharia share {Fard}, consanguinity, by them together or by uterine relationship.

Arrangement of those entitled to the estate

554. The arrangement of those entitled to the estate shall be as follows, namely: -

- (a) those of sharia shares;
- (b) consanguineous relatives;
- (c) restoration to those of Sharia shares other than the spouses;
- (d) uterine relatives;
- (e) restoration to one of the spouses;
- (f) the one to whom affinity is admitted attributed to others;
- (g) the legatee of what exceeds the limit within which the legacy is executed.;
- (h) the public treasury.

Chapter II

Those of Ordained Shares

Definition of ordained share and those of ordained shares

355. {1} An ordained share is a specified share allotted to the heir in the estate.
- (2) Ordained shares are one half, one-quarter, one-eighth, two-thirds, one-third, one-sixth and one-third of the rest.
- (3) Those of ordinal shares are the husband, the wife, the father, the mother, the daughter, maternal half-blood brothers, the son's granddaughter, the full-blood sister, the paternal half-blood sister, the valid grandmother and the true grandfather.

Ordained shares of the husband

356. The husband inherits by ordained shares -
- (a) one-half of the estate, in the absence of an inheriting descendant; at all;
- (b) one-quarter of the estate in the presence of an inheriting descendant, at all.

Ordained shares of the wife

357. (1) The wife inherits by ordained shares -
- (a) one-quarter of the estate, in the absence of an inheriting descendant, at all;
- (b) one-eighth, of the estate, in the presence of an inheriting descendant, at all;
- (2) Where wives are several, the ordained share shall equally be divided among them.

Conditions of one of the spouses inheriting the other

358. There shall be required for one of the spouses inheriting the other that -
- (a) the marriage shall be valid;
- (b) marriage shall de facto or de jure, be established between them.

Cases of the daughter inheritance

359. The daughter inherits -
- (a) one-half of the estate by ordainment, where she is alone, and there is no son with her;
- (b) two-thirds of the estate by ordainment, where they are more than one and there is no son with them.

Cases of the father inheritance

360. The father inherits: -
- (a) one-sixth of the estate, by ordainment, upon the presence of an inheriting male descendant.
- (b) one-sixth of the estate, by ordainment and the rest after the shares of those of ordained share, by consanguinity, upon the presence of an inheriting female descendant only.
- (c) all the estate, by consanguinity, where alone, and the rest after the shares of those of ordained shares by consanguinity, upon the absence of an inheriting descendant, at all.

Cases of the mother inheritance

361. The mother by ordainment inherits: -
- (a) one-sixth of the estate, where the deceased has an inheriting descendant or several brothers or sisters, at all;
- (b) one-third of the estate, where the deceased has no inheriting descendant, and no group of brothers and sisters, and the father and one of the spouses are not therewith;
- (c) one-third of the rest of the estate after one of the spouses' share, where there is a father and one of the spouses, and there is neither an inheriting descendant among the heirs, nor a group of brothers and sisters.

Maternal half-blood brother's inheritance

362. Maternal half-blood brothers inherit by ordainment: -
- (a) one-sixth where single and there is neither an inheriting descendant among the heirs at all, nor an inheriting male ascendant;
- (b) one-third where they are more than one and there is no inheriting descendant at all among the heirs, nor an inheriting male ascendant; and shall equally be divided among them, the male having like what is for the female.

Disinheritance of the maternal half-blood brothers

363. The maternal half-blood brothers shall be disinherited, upon presence of an inheriting descendant, at all, or an inheriting male ascendant.

The common question

364. Where among the heirs there are maternal half-blood brothers and with then there is a full-blood brother, or full-blood brothers individually, or a full-blood sister or full-blood sisters, and the shares of those of ordained shares cover all the estate then the full-blood brothers and sisters shall participate in the one-third, to be equally divided between them, the male having similar to what is for the female.

Cases of son's granddaughter inheritance

365. A son's granddaughter inherits: -

- (a) one-half of the estate, by ordainment, where alone, and with her there is no loin daughter, nor a son's grandson of her degree, and she is not disinherited;
- (b) two-third of the estate, by ordainment, where they are more than one and there is neither loin daughter nor a son's grandson of their degree among the heirs and they are not disinherited;
- (c) one-sixth complement of the two-thirds, where with her there is one loin daughter, or a son's granddaughter, higher than her in degree. Where they are several, the one-sixth shall equally be divided between them;
- (d) by consanguinity by others, where with her there is a son's grandson of her degree, or lower than her, and she stands in need thereof; and the estate shall be divided between them, a male having like the portion, of two females.

Disinheritance of the son's granddaughter

366. The son's granddaughter shall be disinherited, where there is with her: -

- (a) a son or a son's grandson of higher in degree than her;
- (b) two daughters or more and with her there is no son's grandson of her degree or lower than her and she stands in need of him;
- (c) two son's daughters or higher than her in degree, or a daughter and a son's daughter higher than her in degree and with her there is no son's grandson, of her degree or lower than her, and she stands in needed of him.

Cases of the full-blood sister inheritance

367. A full-blood sister inherits: -

- (a) one-half of the estate by ordainment, where with her there is no full- blood brother, and no female inheriting descendent and she is not disinherited;
- (b) two-thirds of the estate, by ordainment, where they are more than one, and with them there is no full-blood brother, and no inheriting descendant, and they are not disinherited;
- (c) with others by consanguinity, where with her there is an inheriting female descendant, and she is not disinherited, and in this case, she takes what is left of the estate, after those of ordained shares;
- (d) she shares with the maternal half-blood brothers, in accordance with the provisions of section 364.
- (e) by consanguinity with others, where with her there is one full-blood or more, then the estate shall be divided between them a male having like the portion of two females.

Disinheritance of the full-blood sister

368. A full-blood sister shall be disinherited, where with the hairs there is an inheriting male descendant, or a direct father.

Cases of paternal half-blood sister inheritance

369. A paternal half-blood sister inherits: -

- (a) one-half of the estate by ordainment, where with her there is no paternal half-blood brother and no full-blood sister nor an inheriting female descendant, and she is not disinherited either;
- (b) two-thirds of the estate, where they are more than one and with them there is no paternal half-blood brother, no full-blood sister nor an inheriting female descendant and they are not disinherited;
- (c) one-sixth the complement of the two-thirds, where with her there is a full-blood sister and no consanguineous paternal half-blood brother with her and she is not disinherited;
- (d) by consanguineous with others, where with her there is one paternal half-blood, or more, the estate shall be divided between them or what is left thereof after the shares of those of ordained shares, the male having like the portion of two females;
- (e) by consanguinity with others, where with her there is an inheriting female descendant, no consanguineous paternal half-blood brother, and she is not disinherited.

Disinheritance of the paternal half-blood sister

370. A paternal half-blood sister is disinherited where with the heirs there is an inheriting descendant or a direct father, a full-blood brother, or a full- blood sister becoming consanguineous with others, or two full-blood sisters where with her there is a consanguineous paternal half-blood brother.

The valid grandmother

371. A valid grandmother is the one in the affinity of whom to the deceased no male enters between two females.

Cases of the valid grandmother inheritance

372. A valid grandmother inherits: -

- (a) one-sixth of the estate, by ordainment whether she is one or more or whether she is maternal or paternal or both maternal and paternal or both maternal and paternal together and she is not disinherited;
- (b) where the grandmothers are several the one-six shall equally be divided between them.

Disinheritance of the valid grandmother

373. A valid grandmother is disinherited by the: -

- (a) mother at all;
- (b) father where she is a paternal grandmother;
- (c) grandfather where she is his ascendant;
- (d) relationship of them from any side whether she is an heiress or disinherited.

The valid grandfather

374. A valid grandfather is the one in the affinity of whom to the deceased no female enters.

Cases of the valid grandfather inheritance

375. A valid grandfather inherits: -

- (a) one-sixth of the estates by ordainment, where with the heirs there is an inheriting male descendant, and he is not disinherited;
- (b) one-sixth of the estate, by ordainment, and what is left of the shares of ordained shares by consanguinity, upon presence of the female inheriting descendant and she is not disinherited;
- (c) all the estate by consanguinity, where he is alone, or the rest, after the shares of those of ordained shares, by consanguinity, upon absence of the inheriting descendant at all.

Inheritance of the grandfather with the brothers

376. (1) Where a valid grandfather joins with the full-blood brothers or paternal half-blood brothers, he shall share therewith the estate, as a brother, where they are only males, or males and females, or females consanguined with the female inheriting descendant.

(2) A valid grandfather shall take the rest, by consanguinity, after the shares of those of ordained shares, where he is with non-consanguined sisters by males or he is not consanguined by, or with others.

(3) Where the division or inheritance is by consanguinity, in accordance with provisions of subsections (1) and (2), the valid grandfather shall be disinherited or decreases him from one-sixth, then he shall be deemed one of those of ordained shares and take one-sixth.

Disinheritance of the valid grandfather

377. A valid grandfather shall be interdicted by the father and by every valid grandfather, who is nearer than he.

Chapter III Consanguinity

Inheritance by Consanguinity

378. {1) Inheritance by consanguinity is not an assessed inheritance of the deceased's male relatives and those having their status, or who participate with them of females, who are not restricted in their affinity to the deceased to a female.

{2) Consanguinity is of three types: -

- (a) consanguinity by self;
- (b) consanguinity by others.
- (c) consanguinity with others.

Consanguinity by self

379. Consanguinity by self are parties; some of them are precedent to others according to the following arrangement: -

- (a) filiation and includes the sons, the son's grandsons, even though they are lower;
- (b) parenthood, which includes the father alone;
- (c) grandfathers and the brothers, and include the paternal grandfather even though he is higher and the full-blood brother and paternal half-blood brother;
- (d) paternal cousins, and include full-blood brother cousins or of paternal half-blood brother even though they are lower;

(e) Paternal uncle hood, and includes the full-blood paternal uncle, a paternal half-blood uncle, and their sons, even they are lower.

Entitlement by the consanguinity by self to the estate

380. A consanguineous by self shall be entitled to the estate, where there is no one of those of ordained shares and is entitled to what is left thereof, if any, and nothing therefor, where the ordained shares cover the estate.

Precedence of the better side of consanguines and their participation

381. (1) The better side consanguineous shall have precedence according to the arrangement set out in section 379 then the nearer degree to the deceased, upon coincidence of side, then the stronger relationship, upon equality of degree.

(2) Consanguineous shall participate in their entitlement to their share of the inheritance upon their coincidence in side, and equality in degree and strength.

Consanguinity by the others

382. Consanguinity by others is every female having ordained share from filial side or otherwise, of her degree or annexed to her degree a consanguined by self.

Consanguinity by others inheritance

383.(1) A consanguineous by others shall participate with the consanguineous thereof in all the estate or what is left thereof, after the shares of those of ordained shares; and be divided between them, a male having like the portion of two females.

(2) A consanguineous shall be excluded with his consanguinor, where the shares of those of ordained shares cover all the estate.

Consanguineous with others

384. A consanguineous with others is every female having ordained share from fraternal side, with her a female inheriting descendant of her degree there is no consanguineous by self.

Consanguineous with others inheritance

385.(1) A consanguineous with others shall be entitled to what is left of the estate, after shares of those of ordained shares.

(2) A consanguineous shall be excluded, and inherit nothing, where the shares of those of ordained shares cover all the estate.

Chapter IV

Ascendance by two Sides

386.(1) Where heir descends two side ascendants deceased by two sides, he shall inherit by both together, where the two sides are different in the inheritance capacity.

(2) Where the heir, mentioned in sub-section (1) is disinherited from one side, he shall inherit by the other side.

Chapter V

Disinheritance, (Radd) Increase of Shares and Decrease of Shares (A'ol)

Definition of disinheritance

387.(1) Disinheritance is the deprival of an heir of all, or some of inheritance for the presence of an heir.

(2) Disinheritance is of two types: deprival disinheritance and decrease disinheritance.

(3) Whoever is disinherited, disinherits others.

(4) Whoever is prevented from inheritance under the provisions of sections 350 and 351 does not disinherit others.

Definition of increase of shares (Radd)

388. (Radd) is an increase in the shares of those of ordained shares proportionate to their ordained shares.

Cases of the (Radd)

389.(1) Where the Shares of those of ordained do not include the estate and there is no consanguineous, what is left is returned to those of ordained shares, not from the spouses proportionate to their shares.

(3) Where there is no heir of those of ordained shares, consanguineous or uterine relatives, other than the spouses, the rest shall be returned thereto.

(A'ol) Decrease of shares

390(1). (A'ol) is the decrease in the shares of those of ordained shares, proportionate to their shares, where the shares exceed the base of the question.

(2) whatever the question has been decreased to (A'ol) shall be deemed a base, by which the estate shall be divided.

Chapter VI Uterine Relatives Branch I

Classes of Uterine Relatives Definition of uterine relatives

391. Uterine relatives are every relative, who is not of an ordained share, and is not consanguineous.

Classes of uterine relatives

392. Classes of uterine relatives shall be as follows, namely: - (a) the first class: -

(i) the daughter's grandsons even though they are lower;

(ii) grandsons of son's granddaughters, even though they are lower. (b) the second class: -

(i) uterine grandfathers even though they are higher; (ii) uterine grandmothers even though they are higher.

(c) the third class: -

(i) sisters' nephews, full-blood sisters, paternal or maternal half-blood sisters, even they are lower;

(ii) the brother's nieces full-blood brothers, paternal or maternal half-blood brothers, even though they are lower;

(iii) brother's offspring of a mother even they descend. (d) the fourth class: -

(i) maternal uncles of the deceased and his aunts at all, his maternal uncles and maternal aunts at all;

(ii) the descendants of the first part even though they are lower;

(iii) paternal uncles of the maternal father of the deceased, his paternal aunts, sisters, and maternal aunts, at all, the paternal uncles of the deceased's mother and her paternal aunts, paternal uncles and aunts, at all;

(iv) descendants of the third category, even though they are lower;

(v) paternal uncles of the deceased's mother great grandfather, his paternal aunts, maternal uncles and aunts, at all; paternal uncles of the deceased's father's grandmother, her paternal aunts, maternal uncles and aunts, at all; paternal uncles of the deceased's grandfather, his paternal aunts and maternal uncles and aunts, at all; paternal uncles the deceased's grandfather, her paternal aunts, maternal uncles and aunts, at all;

(vi) ascendants of the fifth category, even though they are lower.

Branch II Inheritance of Uterine Relatives

The first class of uterine relatives

393. (1) The best entitled of uterine relatives to inheritance are those of the nearest degree to the deceased.

(2) Where the first class of uterine relatives equal in degree, the one who ascends by an heir shall have precedence to that who does not ascend by an heir.

(3) Where all the first class of uterine relatives ascend, or do not ascend by an heir, they shall participate in the inheritance, and the estate shall be divided between them equally where are only males or only females, and where they are males and females, the male shall have like the portion of two females.

The second class of uterine relatives

394. (1) The best entitled to inheritance of the second class of uterine relatives are those of the nearest degree to the deceased.

(2) Where the second class of uterine relatives are equal: -

(a) in degree and relationship, the inheritance shall be divided between them equally where they are only males or only females and where they are males and females, then the male shall have like the portion of two females;

(b) in degree and are different in relationship that some of them is from the father's side and some of them from the mother's side, then the estate shall be is divided between them in thirds, two-thirds for the father's relationship and one-third for the mother's relationship.

Multiplicity of the sides of relationship of uterine relatives

395. Multiplicity of sides of the relationship to an heir of uterine relatives shall be of no count, save upon difference of the side.

The third class of uterine relatives

396. (1) The best entitled to inheritance of the third class of uterine relatives, are those of the nearest degree to the deceased.

(2) Where the third class of the uterine relative's side are equal in degree: -

(a) and some of them ascend by a consanguineous, and some of them ascend by a uterine relative, then whoever ascends by a consanguineous shall have precedence to whoever ascends by a uterine relative;

(b) in ascendance, whoever is best entitled to inheritance shall be the strongest relationship;

(c) in ascendance and strength of relationship, they shall participate in inheritance, and the estate shall be divided between them equally where they are only males or only females, and where they are males and females the male shall have like the portion of two females.

Sole paternal relationship in the first class of the classes of the fourth category of uterine relatives

397. Where there are sole in the first category of the fourth class set forth in section 392, the paternal relationship, namely the maternal uncles of the deceased and his aunts at all, or the maternal relationship, namely the maternal uncles of the deceased, and his aunts at all, there shall have precedence whoever is of strongest relationship. Whoever of both parents, shall have precedence to whoever is of one of them, and whoever is of paternal shall have precedence to whoever is of maternal; and where they are equal in relationship, they shall participate in inheritance, and upon joinder of both parties, two-thirds shall be to the paternal relationship, and one-third shall be to the maternal relationship, and the share of every party shall be divided as aforesaid.

Application of the provisions of section 397 on the third and fourth categories of the fourth class of uterine relatives

398. The provisions of section 397 shall apply to the third and fourth categories of the fourth class of uterine relatives.

Precedence of the nearest in degree of the second category of uterine relatives

399. Of the second category of the fourth class of uterine relatives, the nearest thereof in degree shall have precedence to the farthest, every though he is not from his relationship side and upon equality and unity of the relationship side, the strongest shall have precedence, where they are all children of a consanguineous, or children of a uterine relative, and where they are different the child of a consanguineous shall have precedence to the child of a uterine relative, and upon difference of the relationship side the two-thirds shall be for the paternal relationship and one-third shall be for the maternal relationship and what is gained by each party thereof shall be divided in the aforementioned way.

Application of the provisions of section 399 to the fourth and sixth categories of the fourth class of uterine relatives

400. The provisions of section 399 shall apply to the fourth and sixth categories of the fourth class of uterine relatives.

Chapter VII

Miscellaneous Questions Branch I

The Inheritance of the Missing The missing inheritance mode

401. {1} There shall be endowed the share of the missing in his testator's estate, in presumption of his life; where he appears alive, he shall take the same, and where his death is decreed, his share shall be returned to whoever may be entitled thereto of the heirs at the time of death of the testator.

{2} Where the missing appears alive after being decreed dead, he shall take what is left in the hand of the heirs of his share in his testator's estate

Decree of the missing's death

402. Where death of the missing is decreed and his estate is distributed between his heirs, and then he appears alive he shall have what is left in the hand of the heirs of his estate and shall not revert thereto for what has elapsed.

Branch II

The Fetus's inheritance

Way of the pregnancy inheritance

403. There shall an endowed for the fetus of his testator's estate, the more enough of the two shares in presumption that it is a male or female.

Decrease and increase of what is endowed for the fetus

404.(1) Where what is endowed for the fetus of the estate is less than what it is entitled thereto, the remainder shall be reverted thereby to whoever the increase has entered in his share of the heirs.

(2) Where the endowed for fetus of the estate is more than his share therein, the increase shall be returned to whoever may be entitled thereto heirs.

Branch III

Whoever Affinity is Admitted thereto the one whose affinity is admitted

405. Where it is admitted by: -

- (a) the deceased, during his life affinity to himself, his admission shall not transcend to the heirs, unless the admission satisfies its validity conditions;
- (b) the deceased affinity to others than he, and not proved otherwise than by admission, in accordance with the provisions of section 97 and he has not retracted his admission, then whoever has been admitted in his favour shall be entitled to the estate of the admitter, where he has no heir;
- (c) some of the heirs to another affinity to their testator and affinity is not proved otherwise than by such admission, then whoever has been admitted in his favour shall take his share from the admitter no one else, unless he is disinherited.

Branch IV

Inheritance of Child of Adultery and Child of Exchanged Imprecation

Inheritance of adultery and exchanged imprecation Children

406. Child of adultery and Child of exchanged imprecation shall inherit his mother and her relatives; his mother and her relatives shall inherit him.

Branch V

Inheritance of Problem Hermaphrodite Inheritance of problem hermaphrodite

407. A problem hermaphrodite shall have the lesser of the two shares in presumption of his masculinity and femininity

Branch VI

Exchanged discharge

Definition and mode of exchanged discharge

408.(1) Exchanged discharge is agreement of the heirs on some thereof leaving his share of the estate for a known consideration.

(2) Where one of the heir's discharges another: -

- (a) whoever discharge is in his favour shall be entitled to the share of whoever has discharged, and replace him in the estate;
- (b) where what is paid to him is part of the estate, then the portions of whoever has discharged shall be subtracted from the basis of the question and portions of the rest shall remain as they are and where has been paid thereto is from their money, and not provided therefor in the exchanged discharge contract for the mode of dividing the share of whoever has discharged, then the same shall be divided between them proportionate to what has been paid by each; and where what has been paid from each of them is unknown then his portion shall be divided equally between them.

Validity of exchanged discharge

409. Exchanged discharge shall be valid, even though the estate's corpus and amount are unknown.

Time of exchanged discharge

410. Exchanged discharge shall not take place, save after proof of death and limitation of inheritance.

Consideration of exchanged discharge suits

411. The Courts of personal Status shall have jurisdiction to consider exchanged discharge suits, during liquidation of the estate and determine the same, whether the exchanged discharge is for an heir or a stranger for or without consideration.