

Selected Statutory Provisions of Muslim personal status legislation in Arab states

Taken from:

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Contents – translations of selected extracts (from pp.161-190):

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1. Marriage Guardianship and Capacity¹

Algeria 1984 as amended in 2005: ²

Article 7: Capacity for marriage is valid at nineteen years for the man and the woman. However, the judge can permit a marriage before this by reason of a benefit or a necessity, if it is established that the two parties are fit for marriage.

Article 11: The major woman concludes her own contract of marriage in the presence of her *wali* who is her father or a relative or any other person of her choice. Without prejudice to the above article 7, the marriage of the minor is contracted by the *wali* or then by a relative. The judge is the guardian for the person who has none.

Article 13: It is forbidden for the *wali*, whether he be the father or someone else, to compel in marriage the minor person under his guardianship just as he cannot marry this person without their consent.

Egypt 2000

Article 17: Claims arising from a contract of marriage shall not be heard if the wife is aged less than sixteen years (solar) or the husband under years (solar) at the time the claim is raised.

In the event of denial, claims arising from a contract of marriage (in cases following 1st August 1931) shall not be heard unless the marriage is established by official document. Nevertheless, claims for judicial divorce or dissolution, according to circumstance, shall be heard [by the court] to the exclusion of other [claims] if the marriage is established by any written document.

Iraq 1959 as amended in 1978 and 1987

Article 7 (1): Conditions of capacity for marriage are being of sound mind and having completed eighteen years.

Article 8 (1): If a person who has not completed his fifteenth year wishes to get married, the *qadi* may permit him to do so if he establishes his capacity and physical ability, after the approval of his *shar`i* guardian. If the guardian refuses, then the *qadi* shall ask him to give his permission within a set period of time, and he if he does not object or his objection is misplaced, then the *qadi* shall permit the person's marriage.

¹ The selected provisions translated here do not include the full texts on ages of capacity for marriage, as these have been indicated in the body of the text. For reasons of space it has also not been possible to include all the provisions regarding the guardian's right to challenge a marriage on the grounds of *kafa`a*.

² Original text 1984:

Article 7: Capacity for marriage is valid at twenty-one years completed for the man and eighteen years completed for the woman. The judge can permit a marriage before that by reason of a benefit or a necessity.

Article 9: Marriage is contracted by the consent of the future spouses in the presence of the marriage guardian and two witnesses and with the establishing of a dower.

Article 11: The contracting of the marriage of a woman is the duty of her marriage guardian who shall be either her father or one of her close male relatives. The judge shall be the marriage guardian for a person who has no marriage guardian.

Article 12: The marriage guardian may not prevent the person under his guardianship from contracting marriage if she wishes to do so and if this is beneficial to her. Where the guardian opposes the marriage the judge may authorise it subject to the provisions of Article 9 of this law. A father may, however, oppose the marriage of his daughter who is a virgin if this is in the interest of the daughter.

Article 13: It is forbidden for a marriage guardian, whether he be the father or any other person, to compel a person under his guardianship to marry, just as he may not give her in marriage without her consent.

8 (2):³ The *qadi* may permit the marriage of a person who has reached his fifteenth year if there is a pressing necessity requiring this. The granting of permission for this is conditional on the party having reached *shar`i* puberty and having the physical capacity.

Article 9 (1): Nobody, whether a relative or anyone else, is allowed to coerce any person, male or female, into marriage without their consent; a contract of marriage by coercion is voided provided consummation has not occurred. Nor may any relative or other person prevent someone of capacity from getting married, in accordance with the terms of this law.

Article 40: Either spouse may seek judicial divorce if (4) the marriage took place outside court by way of coercion and has been consummated.

Jordan 1976 as amended in 2001:

Article 5: Capacity for marriage requires that the fiancé and the fiancée are sane and have both completed their eighteenth year by the solar calendar. The *qadi* may permit the marriage of a person below this age if the person has completed their fifteenth year and such a marriage holds a benefit on grounds to be specified in directives/guidelines to be issued by the *Qadi al-Qudah*.

Article 13: The consent of the guardian is not a condition in the marriage of a previously married woman who is of sound mind and over eighteen years of age.

Directive of the *Qadi al-Qudah* 2002: the judge may permit marriage under the age of full capacity on the following conditions:

1. that the fiancé is the 'equal'⁴ of the fiancée in the sense of being able to pay her maintenance and prompt dower;
2. that the marriage prevents an existing cause of corruption or avoids the loss of an established benefit;
3. that the *qadi* ascertains the fiancée's consent and choice and that the marriage is in her interest; and that the benefit of marriage is established by medical report if one of the couple is insane or mentally incompetent;
4. that the contract is concluded with the consent of the guardian in accordance with articles 6 and 12 of the JLPS: and
5. that a record be drawn up setting out the *qadi*'s inquiry into the said bases relied upon to permit the marriage, and on the basis of this record a deed of permission for the marriage shall be drawn up in accordance with proper procedure.

Kuwait 1984

Article 29: a) The guardian in the marriage of a virgin who is between the age of puberty and twenty-five years is a male agnate according to the order of succession, and if no agnate exists, guardianship transfers to the judge. This provision applies to an insane or feeble-minded person, whether male or female.

b) It is stipulated that the guardian and the person who is the subject of the guardianship be in agreement.

Article 30: A woman who has been previously married or who has attained twenty-five years of age has freedom of choice in her marriage. She shall not however make her own contract: this shall be done by her guardian. (amended in 2004 to allow an exception for a previously married woman to ask the judge to conclude her re-marriage to her former husband).

³ Inserted 1987. The original law set sixteen years completed as the minimum age of capacity; the 1978 amendment took this down to fifteen, and a further exception was made possible by the 1987 amendment.

⁴ From *kafa'a*.

Article 31: If the guardian prevents the marriage, she is entitled to bring the matter before a judge for him to order or not to order marriage. The same applies if there is more than one guardian and they are of equal status, whether they jointly prevent her marriage or they disagree.

Libya 1984

Article 6: a) The requirements of capacity for marriage are reason and puberty.

b) Capacity for marriage is achieved at reaching the age of twenty.

c) The court may permit marriage before this age is reached for an interest or necessity that it shall evaluate, after the consent of the guardian.

Article 8: a) The guardian is not allowed to force the young man or woman into marriage against their will

b) Similarly, the guardian is not allowed to prevent his female ward from marrying the person she wishes to be her husband.

Article 9: Validity of the contract of marriage requires the consensus of views of the guardian and the ward. If the entitled guardian prevents the ward from marrying the person the ward wishes to marry, the ward may take the matter to court to permit the marriage if the court finds this appropriate.

Mauritania 2001

Article 9: Guardianship is exercised in the interest of the woman. The woman of legal majority may not be married without her own consent and the presence of her guardian. The silence of the 'young girl'⁵ constitutes consent.

Article 10: the guardian must be male, sane, of legal majority, and Muslim if the woman is Muslim.

Article 12: The guardian may mandate another person to conclude the marriage in his place. A woman who is the *wasi* or *kafil* must delegate a man to carry out this task in her place. In both cases the person mandated shall fulfil the conditions in article 10 above.

Morocco 2004⁶

Article 19: Capacity for marriage is completed for the young man and woman with the capacity of reason at eighteen years by the solar calendar.

⁵ La jeune fille. I do not have access to an Arabic text of the law in order to check the meaning in the original Arabic; it could mean a female below the age of legal majority, or a virgin married for the first time.

⁶ Original 1957 text Article 12:

1. Guardianship is the right of the woman, and the guardian shall not contract her marriage unless she authorises him to do so, except in the case of *ijbar* (compulsion) specified hereafter.

2. A woman shall not make the contract herself but shall authorise her guardian to contract her marriage.

3. A woman shall appoint a male agent whom she authorises to contract the marriage of her ward.

4. It shall not be permitted for a guardian, even if he is the father, to compel his daughter who is of age, even if she is a virgin, to marry, except with her permission and consent, unless it is feared that the woman will fall into immorality in which case the judge has the right to compel her to marry in order that she be under the marital authority of a husband of equal status who will take care of her.

Amended 1993 to read:

1. Guardianship is the right of the woman, and the guardian shall not contract her marriage unless she authorizes him to do so.

2. A woman shall authorize her guardian to contract her marriage.

3. A woman of the age of legal majority who has no father may contract her own marriage, or appoint whom she chooses of her guardians [for this purpose].

Article 20: The family judge charged with concluding marriages may permit the marriage of a young man and woman below the age of capacity stipulated in article 19 in a reasoned report setting out the benefit and the reasons justifying such a marriage, after hearing the parents of the minor or his[/her] *shar`i* representative (*na'ib shar`i*) and making use of medical expertise or a social investigation. The report responding to an application for the marriage of a minor is not open to appeal.

Article 21: The marriage of a minor is suspended on the consent of his[/her] *shar`i* representative. This is given by the latter's signature with the minor on the application for permission for marriage, and his presence at the conclusion of the contract. If the *shar`i* representative refuses to give consent, the family judge charged with the marriage shall decide the matter.

Article 24: Guardianship is the right of the woman; the woman of legal majority exercises it according to her choice and her interest.

Article 25: The woman of legal majority may contract her marriage herself, or delegate this to her father or one of her relatives.

Oman 1997

Article 10:

- a. If a person who has not completed their eighteenth year seeks to marry and his [/her] guardian refuses to marry him, then he may take the matter to the judge.
- b. The judge shall set a time limit during which the guardian shall come to give his statement, and if he does not come or his objection is misplaced then the *qadi* shall marry the person.
- c. Bearing in mind the terms of paragraph (b) of this article, a person who has not completed his eighteenth year may be married only with the permission of the judge and after the investigation of the interest [to be served by the marriage].

Article 12: If the closer guardian is absent or of unknown whereabouts and cannot be contacted or vetos [the marriage], then guardianship is transferred to the next [guardian] in line with the permission of the *qadi*.

Article 19: The woman's guardian undertakes her contract of marriage with her consent.

Qatar 2006

Article 28: The woman's guardian carries out her marriage contract with her consent.

Article 29: Marriage is concluded with the permission of the *qadi* by the guardianship of the more distant guardian in the following two cases:

1. If the closer guardian obstructs the woman, or there are a number of guardians in the same level of relationship, and they all veto or they differ.
2. If the closer guardian is absent, and the judge considers that waiting for his opinion will result in the loss of a benefit in the marriage.

Sudan 1991

Article 34: 1) The guardian shall marry the female who has reached puberty, with her permission and agreement to the husband and the dower; her word is accepted regarding having reached puberty, unless appearance belies it.

- 2) The acceptance of the major *bikr* (virgin) is binding, explicitly or implicitly, if her guardian contracts her in marriage without her permission and then informs her of the contract.

Article 36: If the guardian stops maintaining his female ward for a whole year, without excuse, while being lawfully obliged to do it, his guardianship over her lapses.

Article 37: 1) If the guardian refuses to marry his ward then she may ask the judge to marry her,

- 2) The judge may permit the marriage of the woman who petitions him if he finds it established that her guardian is refusing to marry her without *shar`i* justification.

Article 40: 1) The marriage of the insane person, the mentally incompetent person, or the discriminating [minor] shall be contracted only by the guardian, after the appearance of a prevailing benefit.

- 2) The age of discrimination is reached at the age of ten.
- 3) The guardian of a discriminating [minor] female shall not contract her in marriage except with the permission of the *qadi*, for a prevailing benefit, on the condition of the husband's *kafa'a* and a proper dower.

Syria 1953 (1975)

Article 15: 1) Capacity for marriage requires reason and puberty.

Article 16: The male reaches capacity for marriage with the completion of his eighteenth year, and the female with the completion of her seventeenth year.

Article 18: If the male adolescent claims [to have reached] puberty after completing his fifteenth year or the female her thirteenth, and they petition to be married, the *qadi* shall permit it if the truth of their claim and their bodily capacity are apparent to him.

Article 19: If the engaged couple are not suited in age, and there is no interest [to be realised] through this marriage, the *qadi* is allowed to not permit it.

Article 20: If a mature girl who has attained seventeen years wishes to be married, the judge shall ask her guardian to express his opinion within a time limit which he shall stipulate, and if he does not object or if his objection is not worthy of consideration, the judge shall give permission for her marriage on condition of equality of social status.

Tunisia 1956 as amended in 1964 and 1993

Article 5: Both spouses shall be free of *shar`i* impediments and in addition anyone who has not reached the age of twenty for men and seventeen for women shall not be allowed to conclude a contract of marriage. The conclusion of a contract of marriage below the set age requires special permission from the judge. This permission shall be given only for grave reasons and in the interests of a clear benefit to the spouses.

Article 6: The marriage of a minor requires the agreement of the guardian and the mother. If the guardian or the mother refuses to agree, and the minor insists on his/her desire [to be married], the matter shall be raised with the judge. Permission to marry may not be appealed in any manner.

Article 9: The husband and the wife may undertake their own marriage or may appoint whom they like [as a *wakil*]. The guardian likewise has the right to appoint a *wakil*.

UAE 2005

Article 39: The guardian of the woman who has reached puberty shall conclude her contract of marriage with her consent, and the notary shall have her sign the contract. A contract without a guardian is voided, and if consummation has occurred, the couple are divorced, and paternity of the child is established.

Yemen 1992 as amended in 1998 and 1999

Article 7: Conditions for the validity of marriage are: 2) the offer of what customarily means marriage is made by the guardian of the female being contracted [...]

Article 15: The contract concluded for a minor female by her guardian is valid. The person to whom she is contracted in marriage may not consummate the marriage, nor does she move to live with him, until after she is ready for intercourse, even if she is over fifteen years old. The contract of a minor male is valid only if his interest [in this marriage] is established.

Article 18 (2): If the woman's guardian is vetoing [her marriage], the *qadi* shall order him to marry her, and if he refuses, the *qadi* shall order the next closest guardian in line and then the next after him to marry her, and if there are no other guardians or they all refuse to marry her, then the *qadi* shall marry her to an equal for a proper dower.

Article 30: Every marriage that fulfils the pillars and conditions set out above is valid even if not followed by consummation, and all the effects of marriage stipulated in this law arise from the time of its conclusion, so long as it is not suspended. A suspended marriage is one that is suspended for the consent of the person who holds the consent [...] as for the contract concluded for the minor and the insane, the effects of this contract arise from the time of contract and they may dissolve it upon [the minor] reaching puberty and [the insane person] recovering.

2. Polygyny⁷

Algeria 1984 as amended in 2005⁸

Article 8: It is permitted to contract marriage with more than one wife within the limits of the *shari`a* if there is justified motivation and the conditions and intention of equitable treatment. The husband shall inform the existing wife and the future wife, and shall present a request for authorisation of the marriage to the head of the court in the jurisdiction of the marital home. The president of the court may authorise the new marriage if he establishes their consent and finds that the husband has proven the justified reason and his ability to provide equitable treatment and the necessary conditions for conjugal life.

Article 8 *bis* In case of deception, each wife may lay an action for divorce against the husband.

Article 8 *bis* (1) The new marriage is dissolved before consummation if the husband has not obtained the judge's authorisation as per the conditions in article 8 above.

Egypt 1929 as amended in 1985

Article 11 *bis*: The husband shall confirm his social status in the marriage document, and if he is [already] married, he shall set out in the statement the name of the wife or wives to whom he is already married and their places of residence. The notary shall notify existing wives of the new marriage by registered letter with recorded delivery.

A wife whose husband takes a second wife may petition for divorce from him if she is affected by some material or mental harm of a kind which would make it impossible for a couple such as they to continue living together, even if she has not stipulated in the contract that he will not marry another woman while married to her.

If the judge is unable to reconcile them, he shall rule for a final *talaq*. The wife's right to petition for divorce on these grounds lapses upon the expiry of one year after the date of her knowledge of the other marriage, unless she has agreed to it explicitly or implicitly. Her right to petition for divorce shall be renewed whenever he marries another woman.

If the new wife was not aware that [her husband] was [already] married and it subsequently transpires that he is, she likewise has the right to petition for divorce.

Iraq 1959 as amended in 1980

Article 3(4): Marriage to more than one woman shall not be permitted except with the permission of a judge. For such permission to be given, the following two conditions must be fulfilled:

- a) the husband must have the financial ability to support more than one wife
- b) there must be some lawful benefit.

(5) If a lack of equity between the wives is feared, polygyny shall not be permitted; the assessment of this shall be left to the judge.

⁷ The selected provisions in this section illustrate constraints on polygyny additional to those contemplated in the traditional rules and included in the codes, notably the right to equitable treatment with co-wives and not to share accommodation with a co-wife. These rules are included in the statutory instruments in Kuwait and Oman as well as in the other codifications.

⁸ Original text 1984: Article 8: It is permitted to contract marriage with more than one wife within the limits of the *shari`a* if the reason is justified and if the conditions and the intention of maintaining equity are met and after prior notification to existing and future wives. Any of these may instigate legal action against the husband in case of harm or to petition for divorce in the case of lack of consent.

(6) Any man who makes a marriage contract with more than one woman in breach of the provisions of paragraphs 4 and 5 shall be punished by a prison sentence which shall not exceed one year or by a fine not exceeding one hundred dinars or both.

(7) The terms of article 3(4) shall not apply where the woman intended in marriage is a widow.⁹

Jordan 1976 as amended in 2001

Article 40: A man who has more than one wife shall be obliged to treat them equally and equitably, and he shall not be entitled to accommodate them in a single dwelling except with their consent.

Article 6 *bis* a)¹⁰ Before carrying out the contract for a polygynous marriage, the *qadi* shall ascertain the following:

- 1) the husband's financial ability to pay the dower and maintenance; and
 - 2) that the second wife is informed that the husband is (already) married
- b) The court shall notify the first wife of the polygynous contract after it has been concluded.

Mauritania 2001

Article 45: It is permitted to contract marriage with more than one wife if the conditions and intention of equity are met and after prior notification of the former and the future wife having stipulated monogamy.

Morocco 2004¹¹

Article 40: Polygyny is prohibited if there is fear of lack of justice between the wives, and likewise prohibited if there is a stipulation from the wife against her husband marrying another wife [while married to her].

Article 41: The court shall not permit polygyny:

If the exceptional objective justification is not proven to it;

If the man seeking [permission] does not have sufficient resources to provide for two families and guarantee all rights of maintenance, accommodation and equality in all aspects of life.

Article 42: If there is no stipulation prohibiting polygyny, the person wishing [to undertake a polygynous marriage] shall seek permission from the court. The application shall include an explanation of the exceptional reasons justifying it, and shall attach a report of his material situation.

Article 43: The court shall summon to appear the wife of the man who wishes to undertake a polygynous union. If she is notified in person and does not appear, or refuses to accept the summons, the court shall send a court usher with a written notice informing her that if she does not attend the session on the date specified in the notice then the husband's application shall be considered in her absence. The application can also be considered in the absence of the woman whose husband wishes to marry another wife if the Public Prosecutor is unable

⁹ This clause was inserted in 1980.

¹⁰ Added in 2001

¹¹ Text in *Mudawwana* 1957 as amended in 1993: Article 30: 1) The first wife shall be advised that her husband intends to marry a second wife.

2) The wife may stipulate that her husband shall not marry another wife, or else she has the right to choose [to leave the marriage].

3) Marriage may not be contracted with a second wife unless she has been informed that the man who wishes to marry her is already married to another woman.

to reach a locality or residence from where she may be summoned. If the reason that it is not possible to reach the wife to summon her to appear arises from the husband providing, with ill intention, an incorrect address or alteration in the wife's name, the husband shall be liable to the penalty specified in section 361 of the Criminal Code, this on application of the injured wife.

Article 44: The discussion shall take place in the consulting room in the presence of the two parties, and they shall be heard in a situation of mediation and reconciliation, after examinations of the facts and presentation of the required statements. The court may permit polygyny in an argued report not open to any appeal if it finds an exceptional objective justification to be established, and if the legal conditions are met, while constraining it with conditions to the benefit of the existing wife and their children. Article 45: If during the discussions it is established to the court that the marital relationship cannot continue, and the wife whose husband desires a polygynous union insists on seeking divorce, the court shall specify an amount to cover payment of all the rights of the wife and children.

The husband shall deposit the set sum within a deadline of not more than seven days. The court shall issue a ruling for judicial divorce (*tatliq*) when the deposit is made, and this ruling shall not be open to any appeal in so far as it ends the marital relationship.

Failure to deposit the said amount within the set deadline shall be considered a withdrawal of the application for permission to undertake a polygynous union.

If the husband insists on seeking permission for polygyny, and the existing wife does not agree, but does not seek divorce, the court shall automatically apply the framework of discord (*shiqaq*) set out in articles 94-97 hereunder.

Article 46: In the event that permission for polygyny is granted, the contract shall not be concluded with the woman until after she has been notified by the *qadi* that the man who wishes to marry her is married to another, and after she has consented to that.

Qatar 2006

Article 14: Capacity for marriage requires rational capacity and puberty.

In the event of marriage to another woman, the documenter shall ascertain that the wife has knowledge of the husband's financial circumstances if the husband's situation suggests that financial ability is not in place. The documenter may not refuse to document the contract if both parties wish to conclude it. In all cases the wife or wives shall be informed of this marriage after it has been documented.

Syria 1953 as amended in 1975

Article 17: A judge may refuse permission for a man who is already married to take another wife unless he has a lawful justification and is capable of providing maintenance for both.

Tunisia 1956 as amended in 1958, 1964¹²

Article 18: 1) Polygyny is prohibited.

2) Any man who marries while he is already married before the bond of his previous marriage is dissolved shall be punished by one year in jail and by a fine in the amount of 240,000 francs or by one of the two penalties. This shall apply even if the new marriage is not contracted in accordance with the provisions of the law.

Article 21: An irregular marriage is one that is accompanied by a condition contradicting the essence of the contract, or is concluded regardless of the terms of [...] article 18 of this

¹² The second paragraph was an expansion on the original 1956 text through a 1958 explanatory law; there are three further paragraphs regarding various penalties added in 1964, not translated here.

law... If criminal proceedings arise in application of article 8 of this law, then the crime and the irregularity of the marriage shall be ruled on in one judgement.

Spouses who continue to live together despite the declaration as to the irregularity of their marriage shall be liable to six months' imprisonment.[...]

Yemen 1992 as amended in 1998:¹³

Article 12: A man is allowed up to four wives provided the following is realised:

1. that he has the ability to be equitable and if not, then one;
2. that the husband has the capacity to provide [for the wife];
3. that the woman is notified that the man is married to another woman.

¹³ Original text 1992: Article 12:

1. A man shall be permitted to marry up to four wives provided he has the ability to treat them equitably, otherwise only one.
2. He may make a contract with another wife upon fulfilment of the following conditions:
 - a. that there is some lawful benefit
 - b. that the husband has the financial capacity to support more than one wife
 - c. that the woman is informed that the man who wishes to marry her is married to someone else
 - d. that a wife is informed that her husband wishes to take another wife

3. The Marital Relationship¹⁴

Algeria 1984 as amended in 2005

Article 36: the obligations of the two spouses are as follows:

1. to safeguard conjugal ties and the duties of their life together
2. cohabitation in harmony and mutual respect and in kindness
3. jointly contribute to protecting the interests of the family, and to the protection and sound education of the children
4. joint effort in managing family matters and in spacing births
5. respecting their respective parents and relatives and visiting them
6. preserving the bonds of family and good relationships with parents and kinsmen
7. Each spouse has the right to visit and to have visit their parents and relatives according to convention.¹⁵

Article 37: Each spouse retains their own property. At the same time, the two spouses may, in the marriage deed or by another authentic deed, agree upon the community of goods acquired during the marriage and determine the proportions returning to each of them.

Article 78: The husband shall provide maintenance for his wife, in accordance with the provisions of articles 78, 79 and 80 of this law, from the date of the consummation of the marriage or if she is in need thereof, on the basis of evidence.¹⁶

Egypt 1920 as amended in 1985

Article 1: The husband is obliged to maintain the wife from the date of the valid contract if she delivers herself to him, even if only legally,¹⁷ and even if she is wealthy or is of a different religion to him.

¹⁴ The selected provisions here focus on the issue of 'obedience', the wife's right to work, and mutual rights and duties. For lack of space, I have not included the more standard texts in many of the laws regarding the provision of the marital home, dower, and the details of maintenance.

¹⁵ Original text 1984: Article 36: The obligations of the two spouses are as follows:

1. to protect the conjugal bonds and the duties of their life together
2. to contribute jointly to the preservation of the interests of the family, and to the protection of the children and their sound education;
3. to preserve the bonds of family and good relationships with parents and kinsmen.

Article 37: The husband is required to:

1. provide maintenance for the wife within the limits of his ability, except from such time as it is established that she has abandoned the matrimonial home
2. act with complete equity towards his wives if he has more than one.

Article 38:

The wife has the right to:

- visit those of her relatives who are within the degree within which marriage is prohibited and to receive them in accordance with custom and convention
- dispose freely of her property.

Article 39:

The wife is required:

1. to obey her husband and to accord him the respect due to his position as head of the family
2. to suckle her offspring if she is able to do so and to bring them up
3. to respect the parents and family of her husband.

¹⁶ Unlike the other two articles translated above, article 74 was not amended in 2005. The three other articles to which article 74 refers concern what maintenance has to include, how it is to be assessed and a limit on arrears that may be awarded, of not more than one year prior to the claim being filed at court.

¹⁷ The translation of this phrase is borrowed from el-Alami and Hinchcliffe 1996 52.

The wife's illness does not prevent her entitlement to maintenance.

Maintenance comprises food, clothing, accommodation, the cost of [medical] treatment and other matters required in law.

Maintenance is not an obligation for the wife if she becomes an apostate, or voluntarily declines to submit herself to her husband without right, or is forced to do this by some reason not from the husband's part, or if she goes out without the permission of her husband.

The wife's maintenance shall not be held to lapse by reason of her going out of the marital home without the consent of her husband in such circumstances as are generally endorsed, whether by legal text or in custom or by reason of necessity, nor her going out to legitimate work, provided that it does not transpire that she is abusing this right, or that her exercise thereof is contrary to family interests and her husband has asked her to refrain from it.

Law no. 25/1929 as amended in 1985:

Article 11 *bis* 2: If the wife refuses to obey her husband without right, marital maintenance ceases from the date of her refusal.

Her refusal shall be considered to be without right if she does not return to the marital home after the husband has called upon her to return by a notification via the notary [delivered] to her person or to a person delegating for her. The husband must identify the [marital] home in this notification.

The wife is entitled to object to this before the first instance court within thirty days from the date of the notification. She shall set out in the text of her objection the *shar`i* reasons on which she is relying in her refusal to obey him. Failing this her objection shall be ruled not acceptable.

The cessation of her maintenance is calculated from the date of the end of the objection period if she does not object [within this period].

When considering the objection, or based on a petition from one of the spouses, the court shall intervene to end the dispute between them by reconciliation, with the continuation of the marriage and harmonious cohabitation. But if it becomes clear that the dispute is chronic and the wife petitions for judicial divorce, then the court shall take the arbitration measures set out in articles 7 to 11 of this Law.

Iraq 1959 as amended in 1980

Article 25

1. The wife is not due maintenance in the following situations:
 - a. if she leaves her husband's home without permission and without *shar`i* reason
 - b. if she is imprisoned for a crime or a debt
 - c. if she refuses to travel with her husband without *shar`i* reason.
- 2.¹⁸ The wife shall not be bound to obey her husband, and shall not be considered disobedient (*nashiz*), if the husband is arbitrary in his demand for obedience, intending to injure or oppress her. In particular, the following shall be considered by way of injury or oppression:
 - a. the husband failing to prepare for his wife a *shar`i* home that is appropriate to the two spouses' social and economic status
 - b. if the *shar`i* home that is prepared is far from the wife's place of work such as to make it impossible for her to reconcile her domestic and employment commitments
 - c. if the furnishings prepared for the *shar`i* home do not belong to the husband
 - d. if the wife is suffering an illness that prevents her obeying her husband.

¹⁸ Inserted 1980.

3. The court shall give long consideration in issuing a ruling for the disobedience of the wife, in order to understand the reasons for her refusal to obey her husband.

4. The court shall rule on the wife's *nushuz* [only] after having expended its utmost efforts in removing the causes that prevent her obedience.

5. *Nushuz* is considered a reason for judicial divorce, in the following manner [...]

Article 33: The wife's obedience is not due the husband in any matter contradicting the rulings of the *shari`a*, and the judge can award her maintenance.

Jordanian Law of Personal Status 1976 (as amended in 2001):

Article 37: After receiving the immediate portion of the dower, the wife shall obey her husband and live in his lawful home and shall move with him to any place the husband wishes, even if this is outside the Kingdom, provided that it is a safe place for her and that there is no condition in the [marriage] contract requiring otherwise. If she withholds obedience, her right to maintenance shall be forfeit.

Article 39: The husband shall be obliged to make conjugal life with his wife agreeable and to treat her in a proper manner, and the wife shall obey her husband in matters which are lawful.

Article 67: Maintenance to the wife shall be incumbent upon the husband from the time of the valid contract, even where there is a difference of religion, and even if she is living in her family's house, unless he asks her to move and she refuses without lawful right. She shall have the right to refuse if the husband has not paid the prompt dower or if he has not prepared a lawful home for her.

Article 68:¹⁹ A wife who works outside the home shall be entitled to maintenance on two conditions: a) that her work is legitimate; and b) that her husband consents to the work, explicitly or implicitly; he may go back on his consent only for a legitimate reason and without thereby causing harm to the wife.

Article 69: If the wife is disobedient, she shall not be entitled to maintenance. A 'disobedient' wife is one who leaves the matrimonial home without lawful justification or who refuses to allow the husband to enter her house prior to his asking her to move to another house. Lawful justification for her leaving the home shall include harm caused to her by the husband through beating or by ill-treatment.

Kuwaiti Personal Status Law 1984

Article 87: a) If the wife refuses to move to the matrimonial home without justification or prevents the husband from cohabiting with her in her home, provided that he has not prevented her moving (to the marital home), her right to maintenance shall be forfeit for the duration of her refusal which is established by the court.

b) A wife's violation of her marital duties shall not be established except by her refusal to abide by a final judgment for her to show compliance.

c) Her refusal shall be justified if the husband is not faithful to her, if he does not pay the prompt dower, or does not provide a lawful dwelling, or if he does not provide maintenance and it is not possible to implement a ruling for maintenance because he has no apparent funds.

Article 88: It shall not be permissible for a judgment for obedience to be imposed on the wife by force.

¹⁹ Amended 2001. Original 1976 text: No maintenance is due the wife who works outside the house without the consent of her husband.

Article 89: It shall not be considered to be a violation of matrimonial duties for a wife to go out for any lawful purpose, nor for any permitted work, provided her work does not conflict with the interests of the family.

Article 90: A wife shall move with her husband, unless the court finds that there is benefit in her not moving.

Libya 1984

Article 17: The wife is entitled [to the following] from her husband:

- a) maintenance and its effects within the limits of the capacity of the husband and his ability, according to the provisions of this law;
- b) not usurping her private property; she may dispose of it as she wishes;
- c) not causing her physical or mental injury;

Article 18: The husband is entitled [to the following] from his wife:

- a) maintenance and its effects where the husband is needy and the wife is wealthy, in accordance with the provisions of this law;
- b) concern for the husband's repose and his emotional and mental stability;
- c) supervising the conjugal home, organising its affairs and looking after it;
- d) custody of her children from him and looking after them, and breastfeeding them if there is no obstacle health-wise.

Article 23: The wife's maintenance is obligatory on the husband with means from the date of the valid contract. The wife with means shall be obliged to maintain her husband and her children from him for the period of his incapacity. Maintenance shall be assessed according to the financial position of the person bound to provide it at the time of it being imposed.

Article 73: b) Rulings of *nushuz* issued before this law are abrogated, and are considered as if they never were.

Mauritania 2001

Article 55: A valid marriage gives rise to all its effects and establishes the following rights and duties:

1. maintenance and accommodation
2. preservation of honour, the duty of faithfulness, help and assistance.

Article 56: The husband is the head of the family. He exercises this function in the interest of the family. The wife gives her help to the husband in the management of the family.

Article 57: The wife may, subject to the prescriptions of the *shari`a*, exercise any profession outside the conjugal home.

Article 58: The wife disposes freely of her personal property. The husband may supervise her management only in the matter of a gift taking up more than a third of her property.

Article 150: The wife's right to a ruling for maintenance ceases (3) by *nushuz*.

Morocco 2004

Article 51: ²⁰ Mutual rights and duties of the spouses:

²⁰ The equivalent provisions in the 1957 law read as follows: Article 34: Reciprocal rights and duties of the spouses are: *shar`i* cohabitation; good relations, mutual respect and affection and the preservation of the family interest; mutual inheritance rights of the spouses;

1. family rights such as the paternity of children and the impediment of affinity.

Article 35: The wife's rights from her husband are:

1. *shar`i* maintenance including food, clothing, medical treatment and accommodation;
2. justice and equality if the man is married to more than one [wife];
3. being allowed to visit her family and have them visit her in accordance with convention;

1. *Shar`i* cohabitation with the consequent requirements of conjugal relations, justice and equality in the case of polygyny, the fidelity and integrity of each to the other with virtue and the preservation of honour and looking after their offspring;
2. Good conjugal relations, mutual respect, affection and concern, and looking after the interest of the family;
3. the wife bears with her husband the responsibility of managing and looking after the affairs of the house and the children;
4. consultation in the taking of decisions in regard to the management of the affairs of the family and the children and family planning;
5. respect and good treatment by each of the other's parents and *mahr*ams, visiting them and having them to visit as is customary
6. mutual inheritance rights.

Article 52: If one of the spouses persists in violating the duties set out in the previous article, the other party may petition for implementation of what is due, or have recourse to the dispute framework set out in articles 94-97 below.

Article 53: If one of the spouses puts the other out of the marital home without justification, the Public Prosecutor shall intervene in order to promptly restore the wronged spouse to the marital home, taking the [necessary] measures to guarantee [his or her] safety and protection.

Article 49: Each spouse has an estate separate from the other. However, the spouses may, in the framework of management of property acquired during the marriage, agree on its investment and distribution. Such agreement shall be in a written document separate from the marriage contract. The notaries shall inform the spouses of this option at the time of their marriage. In the absence of any such agreement, general rules of evidence shall be applied with regard to the work of each spouse, the efforts they have put in and the burdens they have carried in order to develop the property of the family.

Oman 1997

Article 36: The spouses' mutual rights and responsibilities are:

1. lawful sexual enjoyment of each spouse with the other such as is permitted by the *shari`a*;
2. the fidelity of each to the other;
3. *shar`i* cohabitation;
4. good treatment, mutual respect and affection, and preserving the family interest;
5. caring for children and bringing them up in such a manner as ensures their sound development;
6. the respect of each of them for the parents and close relatives of the other.

Article 37: The wife's rights vis-à-vis her husband are:

1. maintenance;

-
4. full freedom in disposing of her property without the supervision of the husband; the husband has no guardianship over the property of his wife.

Article 36: The husband's rights from his wife are:

1. the wife's preservation of herself and her chastity;
2. the wife's obedience to her husband in accordance with convention;
3. breastfeeding her children if she is able;
4. supervising the house and organising its affairs;
5. respecting the husband's parents and relatives in accordance with convention.

2. permission to visit her parents and close relatives (*mahr*ams) and to have them visit her in accordance with custom;
3. keeping her family name;
4. not usurping her personal property; she has the right to dispose of it freely;
5. not injuring her physically or mentally;
6. equitable treatment between her and other wives, if the husband has more than one.

Article 38: The husband's rights vis-à-vis his wife are:

1. caring for him and obeying him in accordance with custom in view of his being head of the family;
2. managing the house and organising its affairs, and looking after its contents;
3. looking after his children from her, and breastfeeding them if there is nothing preventing that.

Article 54: No maintenance is due the wife in the following situations:

1. if she withholds herself from her husband, or refuses to move to the conjugal home without *shar`i* reason;
2. if she leaves the conjugal home without *shar`i* reason;
3. if she prevents the husband from entering the conjugal home without *shar`i* reason;
4. if she refuses to travel with her husband without *shar`i* reason.

Qatar 2006

Article 55: A valid marriage gives rise to rights that are shared between the spouses, and to rights particular to each of them, in accordance with the provisions of this law.

Article 56: Rights that are shared between the spouses are:

1. sexual enjoyment by each of the other in a *shar`i* manner;
2. fidelity of each to the other;
3. *shar`i* cohabitation;
4. good treatment, mutual respect and affection and looking after the family interest;
5. caring for the children and bringing them up in such a manner as to ensure their sound development;
6. the respect of each for the other's parents and relatives.

Article 57: The wife's rights vis-à-vis her husband are:

1. dower;
2. *shar`i* maintenance;
3. being allowed to visit her parents and close relatives (*mahr*ams) and having them visit her, in accordance with custom;
4. not usurping her personal property;
5. not injuring her physically or mentally;
6. justice between her and other wives if the husband is married to more than one.

Article 58: The rights of the husband vis-à-vis his wife are:

1. caring for him and obeying him in accordance with custom;
2. looking after herself and his property;
3. managing the house and organising its affairs;
4. looking after his children from her and breastfeeding them if there is no *shar`i* obstacle.

Article 68: The husband shall give his wife the opportunity to complete her education to the end of the mandatory period and shall facilitate her pursuit of university education inside the country, in so far as this does not conflict with her family duties.

Article 69: The wife shall be considered *nashiz* and not entitled to maintenance in the following situations:

1. if she refuses herself to her husband, or refuses to move to the conjugal home without *shar`i* reason;
2. if she leaves the conjugal home without *shar`i* reason;
3. if she prevents the husband entering the conjugal home without *shar`i* reason;
4. if she refuses to migrate with her husband or travels without his permission;
5. if she goes out to work without the approval of her husband, so long as the husband is not being arbitrary in forbidding her.

Sudan 1991

Article 51: The wife's rights against her husband are:

- a) maintenance;
- b) being allowed to visit her parents and *mahrms*, and having them to visit her in accordance with custom;
- c) [the husband] not doing [the following]:
 - 1) usurping her private property;
 - 2) injuring her physically or mentally.
- d) justice between her and other wives if the husband has more than one.

Article 52: The husband's rights against his wife are:

- a) caring for him and obeying him as is customary;
- b) looking after herself and his property;

Article 75: No maintenance is due the wife in any of the following cases:

- a) her refusal to move to the marital home, without *shar`i* reason;
- b) leaving the marital home without *shar`i* reason;
- c) preventing the husband from entering the marital home, without *shar`i* reason;
- d) working outside the marital home, without her husband's agreement, provided that he is not being arbitrary in his prohibition on her work;
- e) her refusal to travel with her husband, without *shar`i* reason;

Article 91: The wife is obliged to obey her husband in matters that do not contradict the law, provided the following conditions are met:

- a) that he has paid her prompt dower;
- b) that he is to be trusted with her;
- c) that he prepares for her a *shar`i* dwelling, provided with the necessary items and among good neighbours.

Article 92: If the wife refuses to obey her husband, her right to maintenance lapses for the period of her refusal.

Article 93: The wife shall be considered disobedient in any of the following cases:

- a) her refusal to implement a final [court] ruling for obedience;
- b) cases in which she is considered disobedient set out in article 75.

Article 94: 1) A ruling for obedience may not be forcibly implemented against the wife.

- 2) Rulings for *ta`a* may be implemented twice in the proper ways, according to what the judge considers to be in the spirit of the Islamic *shari`a*, provided that the period between the first and second petitions shall be at least one month.

Article 95: If the wife defends the claim of obedience on the grounds that he has not paid her prompt dower, or has not prepared the dwelling or is not safe [for her to be with] and she sets this out, then if the husband denies this and she is unable to prove it, and he takes the oath at her demand in regard to her defence, then the husband shall be charged with proof, and on establishing his claim he shall be granted the ruling for her obedience.

Syria 1953 as amended in 1975

Article 72: 1) Maintenance for the wife shall be obligatory on the husband – even if she is of a different religion – from the time of the valid contract, even if she is living in her family’s house, unless the husband has asked her to move and she has refused without right.

- 3) Her refusal [to move] shall be considered to be with right so long as the husband has not paid the prompt dower or has not prepared a *shar`i* residence.

Article 73: The wife’s right to maintenance lapse if she works outside the house without the permission of her husband.

Article 74: If the wife becomes disobedient, then she is not entitled to maintenance for the period of her disobedience.

Article 75: The disobedient [wife] is she who leaves the conjugal home without *shar`i* reason or prevents the husband from entering her house before she has asked to be moved to another house.

Tunisia 1956 as amended in 1993

Article 23: Each spouse shall treat the other well and avoid injuring the other. The spouses shall fulfill their conjugal duties according to custom and usage. They shall cooperate in running family affairs and bringing up the children and managing their affairs including their education, travel and financial affairs. The husband, as head of the family, shall provide for the maintenance of his spouse and the children according to his means and their circumstances. The wife shall contribute to maintaining the family if she has means.²¹

UAE 2005

Article 54: Mutual rights and duties of the spouses:

1. sexual enjoyment of each spouse of the other as permitted by the *shari`a*;
2. *shar`i* cohabitation;
3. good treatment, mutual respect and affection, and looking after the family interest;
4. caring for the children and bringing them up in such a manner as to ensure their sound development.

Article 55: The rights of the wife against her husband are:

1. maintenance;
2. not being prevented from completing her education;

²¹ Original text of article 23: The husband shall treat his wife well and make their conjugal life pleasant and shall refrain from harming her. He shall maintain her and his children from her in accordance with his circumstances and hers with regard to the matters generally involved in maintenance. The wife shall participate in supporting the family if she has money. The wife shall pay heed to her husband in consideration of his being head of the family and obey him in that which he tells her to do in these rights and shall fulfil her marital duties as required by custom and convention.

3. not being prevented from visiting her ascendants, descendants and collaterals and having them visit her in accordance with custom;
4. not usurping her personal property;
5. not injuring her physically or mentally;
6. justice between her and other wives if the husband has more than none.

Article 56: The husband's rights against his wife are:

1. obedience in accordance with custom;
2. managing the house and looking after its contents;
3. breastfeeding his children from her unless there is something preventing this;

Article 71: The wife's maintenance lapses in the following situations:

1. if she withholds herself from her husband or refuses to move to the *shar`i* conjugal home without a *shar`i* reason;
2. if she leaves the conjugal home without *shar`i* reason;
3. if she prevents the husband from entering the conjugal home without *shar`i* reason;
4. if she refuses to travel with her husband without a *shar`i* reason;
5. if a court ruling or decision is issued restricting her freedom and is implemented.

Article 72: 1) The wife is permitted to leave the house in circumstances that allow her this according to law or custom or the exigencies of necessity, and this will not be considered as a violation of the obligatory obedience.

2) It will not be considered a violation of obligatory obedience if she goes out to work if she was working when she got married, or if [her husband] consented to her work after the marriage, or if she stipulated this in the contract [of marriage]. The notary shall inquire about this stipulation when drawing up the contract. All this is so long as nothing happens that renders implementation of the stipulation in conflict with the interest of the family.

Article 158: (final paragraph): It is not permitted to execute forcibly a ruling for obedience made against the wife.

Yemen 1992 as amended in 1998

Article 40: The husband shall have the right that his wife be obedient to him in that which is for the benefit of the family, and in particular the following:

1. that she should move with him to the matrimonial home, provided that she has not stipulated in the contract that she should remain in her home or in her family's home, in which case she shall be obliged to make it possible for him to live with her and to consummate the marriage;
2. that she should allow him to have lawful sexual intercourse with her;
3. that she obey his instructions and undertake her work in the matrimonial home in the manner of her peers;
4. that she should not leave the matrimonial home except with his permission.

The husband shall not be entitled to prevent his wife from leaving the home for any lawful purpose or for that which is customary, provided this is not a breach of honour or of her duties towards him, in particular she may leave to attend to her property or to go to her agreed upon employment. It shall be considered a lawful justification for a woman to help her elderly parents where they have no one else to help one or both of them other than her.

Article 41: The following are the obligations of the husband towards his wife:

1. that he prepare for her a lawful domicile which befits both of them;
2. that he provide her with maintenance and clothing which befit both of them;
3. that he maintain equity between her and his other wives if he has more than one wife;

4. that he not interfere with her personal property;
5. that he not cause her either material or moral harm.

4. Stipulations

Algeria: 1984 as amended in 2005

Article 19: The two spouses may stipulate in the contract of marriage, or in another supplementary contract, any clause they consider useful, notably concerning polygyny and the wife's work,²² provided that these do not contradict the dispositions of the present law.

Article 35: If the marriage contract is accompanied by a stipulation that contradicts it, the stipulation is voided, and the contract is valid.

Iraq 1959

Article 6 (3): Lawful stipulations made in the contract of marriage are valid and must be fulfilled.

(4): the wife may seek dissolution of the contract if the husband fails to fulfil what she has stipulated in the contract of marriage.

Jordan 1976

Article 19: If a condition is stipulated in the contract that is of benefit to one of the parties, is not inconsistent with the intentions of marriage, does not impose something unlawful and is registered in the contract document, it shall be observed in accordance with the following:

1) if the wife stipulates something to the husband that brings her a benefit that is lawful and does not infringe upon the right of the other, such as if she stipulates that he shall not remove her from her [home] town, or shall not take another wife during their marriage, or that he shall delegate to her the power to divorce herself, this shall be a valid and binding condition, and if the husband does not fulfil it, the contract shall be dissolved at the application of the wife, and she may claim from him all her matrimonial rights;

2) if the husband stipulates to the wife a condition that brings him a lawful benefit and does not infringe upon the rights of the other, such as if he stipulates that she shall not go out to work, or that she shall live with him in the area in which he works, this shall be a valid and binding condition, and if the wife does not fulfil it, the contract shall be dissolved at the application of the husband and he shall be exempted from paying her deferred dower and maintenance during the *`idda* period;

3) if the contract is constrained by a condition that contradicts the intentions of marriage or imposes something unlawful, such as if one of the spouses stipulates that the other shall not live with him/her, or that they shall not share marital intimacy, or that one of them shall drink alcohol, or shall break off relations with their parents, then the condition is void while the contract remains valid.

Kuwait 1984

Article 40

- a) If the contract of marriage is accompanied by a stipulation that conflicts with its basis, the contract is voided.
- b) If it is accompanied by a stipulation that does not conflict with its basis, but conflicts with its requirements, or is forbidden in law, then the stipulation is voided, and the contract is valid.
- c) If it is accompanied by a stipulation that does not conflict with its basis or its requirements and is not forbidden in law, then the stipulation is

²² This phrase inserted in 2005.

valid and must be fulfilled. If it is not fulfilled then the person who made the stipulation has the right to seek judicial dissolution (*faskh*).

- d) The terms of the preceding paragraph shall apply in the case of the lapse of a particular quality stipulated in one of the spouses.

Libya 1984

Article 3: a) Each of the spouses may insert stipulations in the contract of marriage that do not conflict with the purposes and intentions of marriage.

b) No stipulation shall be considered unless it is explicitly stated in the marriage contract.

Mauritania 2001

Article 28: The wife may stipulate that her husband shall not marry another woman, that he shall not absent himself for more than a given period, that he shall not prevent her from pursuing her studies or from working as well as any other condition not contrary to the permanence of the marriage contract.

Article 29: Partial or total failure by the husband to implement the conditions stipulated by the wife give rise, on the initiative of the latter, to judicial dissolution of the marriage and a gift of consolation (*mut`a*) the value of which is at the discretion of the judge.

Morocco 2004

Article 47: All stipulations are binding except stipulations that contradict the terms and objectives of the marriage contract and legal rules; these stipulations are void while the contract remains valid.

Article 99: Failure to respect any condition in the marriage contract constitutes injury justifying a petition for divorce.

Oman 1997

Article 5:

- e) The spouses shall fulfil their stipulations, apart from a stipulation that renders the prohibited lawful or the lawful prohibited.
- f) No stipulation shall be considered unless it is explicitly stipulated in the marriage contract
- g) In the event the stipulation is violated, the injured spouse has the right to seek judicial divorce.

Qatar 2006

Article 53: If the contract of marriage is accompanied by a stipulation that contradicts its basis, the contract is voided.

If it is accompanied by a stipulation that does not contradict its basis but contradicts the requirements of the contract, or is forbidden in law, then the condition is voided, but the contract is valid.

If it is accompanied by a stipulation that contradicts neither the basis nor the requirements of the contract, the stipulation is valid and shall be fulfilled. If it is not fulfilled, the person who made the stipulation has the right to seek judicial dissolution.

Article 54: The right of judicial dissolution lapses if the one so entitled waives it explicitly or implicitly.

Sudan 1991

Article 42:

- 1) the spouses shall abide by their stipulations, except for a stipulation that renders what is lawful prohibited or what is prohibited lawful.
- 2) If the contract is accompanied by a stipulation that contradicts its purpose or intentions, then the stipulation is void and the contract valid, apart from the stipulation of a time limit which voids the contract.
- 3) no stipulation shall be considered unless it is explicitly stated in the contract of marriage.

Syria 1953 as amended in 1975

Article 14: 1) If the contract of marriage is constrained by a condition contradicting its *shar`i* regulation or its intentions, obliging something that is forbidden, then the condition is void, and the contract is valid.

- 2) If it is constrained by a stipulation that requires a benefit to the woman that is not forbidden in law and does not affect the rights of others and does not constrain the freedom of the husband in his lawful personal affairs, the stipulation is valid and binding.
- 3) If the woman stipulates something in the contract of marriage that constrains the freedom of the husband in his personal affairs, or affects the rights of others, then the stipulation is valid but not binding on the husband, and if he does not fulfil it, then the wife who made the stipulation may seek dissolution of the marriage.

Tunisia 1956

Article 11: Spouses may insert stipulations in the marriage contract. Non-fulfilment or contravention of a stipulation gives rise to the possibility of a petition for dissolution through *talaq*. No rights to compensation arise from the divorce if it takes place before consummation.

UAE

Article 20:

1. Spouses shall fulfil their stipulations, apart from a stipulation that makes what is prohibited (*haram*) lawful (*halal*) or makes lawful what is prohibited.
2. If a stipulation is made that contradicts the basis of the contract of marriage, the contract is voided.
3. If the stipulation does not conflict with the basis of the contract but conflicts with its requirements or is prohibited by law, then the stipulation is voided, and the contract is valid
4. If a stipulation is made that does not conflict with the basis of the contract nor with its requirements, and is not prohibited by law, then the stipulation is valid and shall be fulfilled. If the person to whom the stipulation is made violates it, then the person who made the stipulation is entitled to seek judicial dissolution, whether this be from the side of the wife or the husband; the husband shall be exempt from paying the maintenance for the *`idda* period if the violation is from the part of the wife.
5. If one of the spouses stipulates that the other shall have a particular quality and the opposite transpires, then the person who made the stipulation shall be entitled to seek judicial dissolution.
6. In the event of denial, no stipulation shall be considered unless it is written in the documented contract of marriage

7. The right of dissolution lapses if waived by the person so entitled, or by explicit or implicit consent to the violation. The passage of one year after the occurrence of the violation with the stipulating party's knowledge thereof shall be considered implicit consent, and similarly with [the right to] final *talaq*.

Yemen 1992 as amended in 1998:

Article 7(5): [...] every stipulation not related to a lawful objective of one of the spouses or contradicting the contract shall be abrogated.

5. Judicial *Khul`* and comparable divorce provisions

Algeria 1984 as amended in 2005²³

Article 54: The wife may separate from her husband, without the latter's consent, for the payment of a sum by way of *khul`*. In the event of disagreement on the remuneration, the judge shall order the payment of a sum of not more than the value of the proper dower at the date of the ruling.

Egypt Law no.1/2000

Article 20: The spouses may agree between themselves on *khul`*. If they do not agree, and the wife submits a claim seeking *khul`*, and she ransoms herself and divorces herself²⁴ from her husband by waiving all her *shar`i* financial rights and returns to him the dower that he gave her, the court shall rule for her divorce against him. The court shall rule for the divorce for *khul`* only after attempting to achieve a reconciliation (*sulh*) between the spouses and charging two arbiters with constant endeavour to effect a reconciliation between them, during a period of not more than three months, in the manner set out in Articles 18(2) and 19(1) and (2) of this law; and after the wife has explicitly stated that she loathes life with her husband and that there is no way for their married life to continue, and that she is afraid that she will not [be able to] live within the limits of Allah because of this loathing [that she has for her husband].

It shall not be valid for the consideration of *khul`* to be the waiving [by the wife] of [her entitlement to] custody of children [from the marriage] or their maintenance or any other of their rights.

In all cases, the *khul`* gives rise to a final *talaq*.

In all cases, the ruling shall not be open to any form of appeal.

Jordan 1976 as amended in 2001²⁵

Article 126 b) Before consummation of valid seclusion (*khalwa*), the wife may petition the *qadi* for judicial divorce from her husband if she is prepared to return such dower as she has received from him and other expenses of marriage that the husband has incurred. The husband may choose to receive these costs in cash or in kind [i.e. the items or their value] and if the husband refuses to divorce her, the *qadi* shall dissolve the contract after the return of the dower and expenses is guaranteed.

c) After consummation or *khalwa*, the spouses may agree together on *khul`*. If they do not agree and the wife petitions the court for a *khul`*, setting out by explicit affirmation that she loathes life with her husband and that there is no way for their married life to continue, and that she is afraid that she will not [be able to] live within the limits ordained by Allah because of this loathing, and she 'ransoms' herself by waiving all her marital rights and divorces her husband and returns to him the dower she received from him, the court shall attempt reconciliation between them [the spouses]. If it is unable [to effect reconciliation] it shall send two arbitrators to pursue efforts at reconciliation for a period of not more than thirty days. If reconciliation is not achieved, the court shall rule for her final divorce from

²³ Original text: The wife may separate from her husband for an agreed upon sum; if nothing is agreed upon, then the judge shall order the payment of a sum of not more than the value of the proper dower at the time of the ruling.

²⁴ The verb form is *khala`at*, from the same root as *khul`*.

²⁵ The two paragraphs translated here were inserted in 2001.

him.

Libya 1984

Article 49: a) Either spouse may retract the offer of *mukhala`a*²⁶ before the response of the other.

b) If the retraction is from the side of the husband by way of stubbornness (*ta`annutan*), then the judge shall rule for *mukhala`a* for an appropriate exchange.

c) If the court ascertains that the wife is [financially] unable, it may rule for the payment of the exchange to be postponed until such time as she is able [to pay it].

Mauritania 2001

Article 92: Repudiation (*talaq*) for compensation to the husband given by the wife or her representative or for renunciation of a right that she has against the husband is valid. The compensation must be lawful. In the event of irregularity of the *khul`*, the repudiation is valid, and the husband is not entitled to anything.

Article 93: If it is proven to the court that the wife initiated the repudiation for compensation solely to remove herself from prejudice arising from abuse or from ill-treatment, then the repudiation is effective, and the compensation is returned. The same applies if the wife is a minor or prodigal.

Qatar 2006

Article 122: If the spouses fail to agree on *khul`*, the court shall attempt to reconcile them and for this purpose shall delegate two arbitrators to undertake reconciliation efforts for a period of not more than six months. If the two arbitrators do not arrive at reconciliation [of the spouses] and the wife seeks *khul`* in exchange for her renunciation of all her *shar`i* financial rights, and returns to him the dower that he gave her, the court shall rule for their divorce.

Sudan 1991

Article 170: The disobedient wife may petition for judicial divorce for a ransom (*fidiya*) in accordance with the following conditions:

- a) that the disobedience is established in a judicial ruling;
- b) that one year has passed on the disobedience at the time the claim papers are submitted;
- c) that the petition sets out the material exchange for the divorce by which she shall be bound, in items or in cash;
- d) that she shall set out in her claim that she is unable to perform the rights that her husband has in her regard, and that she has been injured by remaining married to him, along with the waiving of her rights against him.

²⁶ This is another form from the same root as *khul`* and bearing the same meaning.

Article 171: If the husband acknowledges the claim for judicial divorce for ransom, and consents to the proposed ransom, he shall be ordered to cause the *talaq* to occur himself, and if he refuses, the judge shall perform it.

Article 172: If the husband acknowledges the claim for judicial divorce for a ransom, but does not agree to the divorce, and does not set out a legitimate interest in the continuation of his marriage tie to her; or if he consents to the divorce but does not agree to the amount of the ransom, then the judge shall send two arbitrators in accordance with articles 163-168 as it is a situation of dispute.

Article 173: If the husband denies the claim for judicial divorce for ransom in [all] its details, the wife shall be charged with establishing it through confronting him, and if she establishes it then he shall be ordered to undertake the *talaq*, and if he refuses, then the court shall send two arbitrators as it is a situation of dispute.

Tunisia 1956 as amended in 1981

Article 31: Divorce shall be decreed:

1. by mutual consent of the two spouses;
2. based on the application of one of the spouses on grounds of injury;
3. based on the desire of the husband to establish *talaq* or the application of the wife.

Compensation shall be awarded to the spouse who is injured for the material and mental prejudice arising from the divorce in the two cases set out in the second and third paragraphs above.

UAE 2005

Article 110: 1) *Khul`* is a contract between the two spouses in which they agree to terminate the contract of marriage for an exchange paid by the wife or another person.

- 2) Whatever may be validly specified as dower may be validly specified as the exchange for *khul`*; it is not valid to agree on waiving the maintenance or custody of children.
- 3) If the exchange for the *khul`* is not valid, the *khul`* occurs, and the husband is entitled to the dower.
- 4) *Khul`* is judicial dissolution (*faskh*).
- 5) In exception to the terms of paragraph (1) of this article, if the refusal from the husband's part is arbitrary, and it is feared that they will not live in the limits of God, the judge shall rule on *khul`* for an appropriate exchange.

6. Compensation for injurious/arbitrary divorce

Algeria 1984 as amended in 2005:

Article 52: If the judge establishes that the husband has abused his power of *talaq*, he shall grant the wife reparation for the damage she has suffered.

Article 53 *bis*: The judge who pronounces divorce at the application of the wife can grant her reparations for the damage she has suffered.

Egypt 1920 amended in 1985

Article 18 *bis*: If a man divorces his wife without her consent after the marriage has been consummated and for no reason on her part, she shall be entitled, in addition to the maintenance for her *`idda* period, to financial consolation (*mut`a*) to be assessed as the maintenance for at least two years. Regard shall be had [in the assessment of the award] to the financial situation of the husband, the circumstances of the *talaq* and the length of the marriage. The divorcer may be permitted to pay this in instalments.

Iraq 1959 as amended in 1985

Article 39 (3): If the husband divorces his wife and it appears to the court that he was arbitrary in such divorce and that the wife suffered prejudice from this, then the court shall rule, at her petition, for her divorcer to pay compensation (*ta`wid*) appropriate to his financial status and the extent of his arbitrariness, in a total sum, provided this shall not exceed her maintenance for a period of two years, in addition to her other established financial rights.

Jordan 1976 as amended in 2001²⁷

Article 134: If the husband divorces his wife arbitrarily, such as if he divorces her for no good reason, and she applies to the *qadi* for compensation, he shall award her against the man who divorced her compensation (*ta`wid*) of not less than a year's maintenance and not more than three years' maintenance. In imposing it, the situation of the husband, rich or poor, shall be taken into consideration. It shall be paid in a lump sum if the husband is wealthy and in instalments if he is poor. This shall not affect her other matrimonial rights.

Kuwait 1984

Article 65:

- e) if a valid marriage is terminated after consummation, the wife is entitled – apart from maintenance for the *`idda* period – to *mut`a* to be assessed so as not to exceed one year's maintenance, according to the situation of the husband, to be paid to her in monthly instalments following the end of her *`idda*, so long as the two parties have not agreed otherwise in terms of amount or method of payment;
- f) excepted from the terms of the preceding paragraph are:
 - i. divorce for non-payment of maintenance due to the poverty of the husband;
 - ii. divorce for injury if the reason was from the wife's part;
 - iii. *talaq* with the consent of the wife;

²⁷ The original 1976 text allowed for a maximum of one year's maintenance and gave no minimum.

- iv. judicial dissolution (*faskh*) of the marriage at the petition of the wife;
- v. death of one of the spouses.

Libya 1984

Article 51: In the event of *talaq*, the court shall specify the maintenance of the divorced wife during her *`idda*.

If the *talaq* was by reason of the husband, the court shall award *mut`a* according to the financial situation of the divorcer, bearing in mind article 39 of this law [regarding the apportioning of blame by arbitrators].

Mauritania 2001

Article 84: In all cases the wife divorced by *talaq* may approach the court for the rights resulting from the *talaq*, including maintenance and the gift of consolation.

Morocco 2004

Article 84: The wife's entitlements include: deferred dower where there is such, maintenance for the *`idda* period, and *mut`a*. The assessment of the amount of *mut`a* shall take into consideration the duration of the marriage, the financial situation of the husband, the reasons for the *talaq*, and the extent to which the husband was arbitrary in causing it to occur.

Oman 1997

Article 91: The divorcée from a consummated marriage is entitled to *mut`a* according to the wealth of the divorcer.

Qatar 2006

Article 115: Every divorcée is entitled to *mut`a* if the *talaq* is by reason from the husband. Excepted from the terms of the previous paragraph is divorce for lack of maintenance by reason of the husband's poverty.

Mut`a shall be calculated in view of the wealth of the divorcer and the situation of the divorcée, provided that it shall not exceed three years' maintenance.

Sudan 1991 article 138

- 1) The divorced wife is entitled to *mut`a*, apart from maintenance for the *`idda* period, according to the means of the divorcer, provided this shall not exceed the maintenance for six months.
- 2) Excepted from the terms of paragraph 1) are the following cases:
 - a) judicial divorce for failure to maintain by reason of the husband's impoverishment
 - b) judicial divorce for [physical/mental] condition, if the condition is from the side of the wife
 - c) divorce by *khul`* or for a ransom, or for property.

Syria 1953 as amended in 1975²⁸

Article 117: If a man divorces his wife and it appears to the judge that the husband was arbitrary in divorcing her without good reason, and that the wife will suffer distress and poverty from this, the *qadi* may award her compensation (*ta`wid*) against her divorcer

²⁸ The original 1953 text set a maximum of one year's maintenance.

according to the case and the extent of arbitrariness, provided this does not exceed the amount of three years' maintenance for her peers, besides maintenance for the *`idda* period. The judge may require the payment to be made in a lump sum or in monthly [instalments] according to the circumstances.

Tunisia 1956 as amended in 1981²⁹

Article 31 (3) [Divorce shall be ruled for] based on the desire of the husband to establish *talaq* or the application of the wife, and compensation shall be awarded to the spouse who is injured for the material and mental prejudice arising from the divorce in the two cases set out in the second and third paragraphs above.

With regard to the wife, she shall be compensated for material injury by a stipend to be paid after the end of the *`idda* on a monthly basis to the amount on which she is accustomed to living during marital life, including accommodation. This alimony can be reviewed and either increased or decreased according to changes that occur. It shall continue until the woman dies or her social circumstances change, by a new marriage, or by her attaining something that enables her to do without the compensation... Should her divorcer die, the alimony shall be a debt against the estate, to be settled at that time by agreement with the heirs, or by way of [judicial] award of a payment of a lump sum that will take into consideration her age at that time. All this is unless she chooses to have her compensation for material injury paid as one capital lump sum.

UAE 2005

Article 140: If the husband divorces his wife in a valid, consummated marriage by his unilateral wish and without her having asked for this [divorce], she is entitled to *mut`a* besides the maintenance for the *`idda* period according to the circumstances of the husband and not more than the sum of one year's maintenance of her peers. The *qadi* may break the sum into instalments according to the husband's ability to pay, and in assessing the amount shall have regard to the prejudice suffered by the woman.

Yemen Law of Personal Status 1992

Article 71: If a man divorces his wife and it appears to the judge that the husband was arbitrary in divorcing her without good reason, and that the wife will suffer distress and poverty from this, the *qadi* may award her compensation (*ta`wid*) against her divorcer according to the case and the extent of arbitrariness, provided this does not exceed the amount of one year's maintenance for her peers, besides maintenance for the *`idda* period. The judge may require the payment to be made in a lump sum or in monthly [instalments] according to the circumstances.

²⁹ Final paragraph added by the 1981 amendment.

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³⁰ This List of Statutes has been included for ease of reference to the legislative instruments cited in the text. In a few cases, it has not been possible to ascertain the official publication details.

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