

**University of Mouloud MAMMERRI – Tizi Ouzou**  
**Faculty of Letters and Languages**  
**Department of Interpreting and Translation**



*Translation of the first and second book of the 2005  
Family code of Algeria from Arabic into English  
“Problems and solutions”*

A dissertation submitted for the requirement of  
**The Master’s degree in Translation, option Arabic/English/Arabic**

Supervisor:

Professor. **Chérifa BELHOUTS**

Candidate:

Miss **Imène HADHOUM**

*Academic Year: 2013-2014*

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## ***DEDICATION***

I dedicate this work to:

My affectionate mother and my beloved father for all their sacrifices, patience, and emotional support,

My brothers and sisters and all the members of my family who hoped for it so much.

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## ***ABSTRACT***

The translation of legal terminology can not be performed without regard to legal-cultural concepts and differences between legal systems. Problems in the translation from Arabic into English of the legal terminology of the Arab personal status law originate from the fact that this field particularly takes its main sources from the Islamic law and French law which means that many terms do not have an equivalent in English .

This dissertation analyzes this field through the translation of the first part of the 2005 Algerian Family Code into English which has no prior English translation. This part consists in the 1<sup>st</sup> book related to marriage and its dissolution and the 2<sup>nd</sup> book related to the legal representation. Through this translation, we will attempt to analyze the legal language as well as the kind of translation related to it. Moreover, we will try to highlight the common difficulties encountering in translating the religious and legal terms used in this part and present the appropriate strategies to follow in order to solve them.

For this purpose, we divided our research work into four chapters. The definition, history and elements of our corpus are the focus of the first chapter.

Then, a second chapter is devoted to present our suggested translation of the aforementioned part of the Family Code of Algeria.

The third chapter analyses the legal language, both English and Arabic, and provides a brief definition of the legal translation.

Finally, the fourth chapter is a study of the main difficulties in translating the religious and legal terms. It provides some strategies used to deal with these difficulties depending on the skopos “purpose” of our translation which is to give an English version of the first part of the Family Code. A list of this terminology and its translation is also presented in this chapter.

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## ***INTRODUCTION***

Legal translation is one of the most important activities in the world of today regarding the remarkable advance in the legal sphere. Now, it involves all legal texts used in various legal settings be in court, a national or international organization or a law book.

However, legal translation is often treated as a specific category of translation and one of the most complex translational processes. This is mainly due to the complexity of legal discourse that combines two extremes: the inventiveness and resourcefulness of literary translation with the terminological precision of the technical translation.

Each country has its own legal system and thus, its own legal terminology. Translating legal terms requires particular attention because they are bound and rooted in the legal system they belong to. This is the main reason why legal translation is more difficult even than other technical translations; it is bound by each language's culture and system and entails a transfer between different legal systems. An excellent example of problems relating to the translation of such terms may be found in the translation of the Family Code of Algeria.

In fact, the aforementioned legal text takes its main sources from the sharia "Islamic law" like all the Islamic countries and the French law due to the fact that Algeria has been colonized by France for more than a century. Therefore, the translation of its terminology constitutes a difficult process.

The reason why we have chosen this theme is first: because we faced a great difficulty in translating legal and religious terms into English (especially in court judgments related to the personal status) in the office of translation we are working in as translators and we wondered persistently how these words could be translated. Shall we translate them literally or by using loan words? Or shall we be contented with an explanative translation or looking for their equivalent in the target language? Second,

because we have a little tendency to practice legal translation more than any other kinds of translation.

We have chosen the Family Code of Algeria which was subject to modification by Order N° 05-02 of February 27<sup>th</sup>, 2005 because it involves many religious and legal terms like all the personal status laws of the Islamic and Arab countries. Moreover, it exhibits a number of relevant problems regarding translation of legal terminology a translator may encounter.

In this paper, we will suggest an English translation of the first and second book of the Family code of Algeria and then, highlight the main problems or difficulties encountering while translating its legal terminology which has its origin in the Islamic law and French law. We will also suggest some strategies in dealing with such difficulties depending on the purpose of our translation which is to give an English version of the code.

The paper consists of four chapters. Chapter one will be devoted to deal with our corpus. It will focus on defining the Family Code of Algeria, the stages it passed through, the reason why it knew a big delay to be enacted after Algeria got its independence in 1962, the reasons of being subject to the modification in 2005 and its basic elements.

Chapter two will be devoted to the presentation of the translation we will suggest to the first book related to the marriage and its dissolution and the second related to the legal representation. We deemed adequate to follow each page of the target language by the page of the source language.

Chapter three will analyze briefly the legal language and the legal translation. It will define legal language, its main characteristics and the texts in which it is used. Because we will translate a legal text from Arabic into English, we will focus in this chapter on the basis and features of both legal English and legal Arabic with a special

attention to legal English since it is our target language. Besides, the chapter will also briefly study legal translation through defining it and highlighting its main features and difficulties. Finally, it will present the main keys of a good legal translator.

Chapter four will focus on the main difficulties we will encounter while translating the religious and legal terms of the Algerian Family Code from Arabic into English. It will also include the best strategies used to deal with the said difficulties depending on the purpose of our translation that leads us to treat the skopos theory, one of the functional theories followed in most technical translational processes. This chapter will provide a list of the legal and religious terms used in the first and second book of the Family Code of Algeria and their translation following the appropriate strategy that we will adopt in our translation.

We will rely in our paper on some references we deem adequate to our research work. According to our corpus and the nature of our work which consists in translating a legal text, we will select the appropriate dictionaries and legal glossaries used in the field of law as well as legal texts similar to our corpus but written in English. However, the problem of the lack of valuable specialized dictionaries in our Department and even in libraries, in particular those from Arabic into English, will be of a big hindrance to us. Thus, we will be content of the available ones. Moreover, we will choose the books and studies related to translation that highlight the common strategies used to deal with different translational problems, those related to the study of legal language and also those dealing with our corpus. Because most of the religious terms used in the Family Code are quoted directly from the Quran, we will consult the translation of this holy book into English in order to know how these words are translated.

We will also devote an appendix in which we will put an Arabic/English legal glossary of the religious and legal terms we will encounter in the first as well as the second

book of the Algerian Family Code. This glossary will also involve the definition in English of these terms.

**CHAPTER 01**

**PRESENTATION OF THE FAMILY CODE OF**

**ALGERIA**

A Family Code is a series of laws and regulations that stands for governing the family life, the relationships between spouses, parents and children and all the members of the family. In general, all the family codes around the world govern the contract of marriage, divorce, guardianship, the rights and obligations of spouses within marriage and after its dissolution, maintenance, custody, inheritance and parental responsibility. The ultimate aim of the family code is to protect and to promote the family unit.

The corpus we work on is the 2005 Family Code of Algeria printed in 2012 by Berti Editions, Algiers.

## **1.1 An overview of the history of the family code in Algeria**

Algeria, like all the countries around the world, has its own Family Code. Meanwhile, this code passed by different stages until it has been enacted as it is today. We can divide these stages into four: **the stage before 1830, the stage after 1830, the stage of the period between 1962 and 1984 and the stage of the period between 1984 and 2005.**

### **1.1.1 Stage 01: Before the French colonization in 1830**

The legal regulation in the field of personal status in Algeria was subject mainly to the Sharia “Islamic Law”, the Sunnah “the traditions of the prophet Mohammed PBUH” and the local customs and usage. ( مرمول، دروس في مقياس قانون الأسرة الجزائري ص 1 "ترجمتنا")

### **1.1.2 Stage 02: After the French colonization in 1830**

France left the Algerians apply the Islamic law in matters of personal status only. As for the other proceedings as the civil, commercial or administrative ones, the French law was to be applied. There were special courts devoted to rule on personal status matters between Algerians called “**the legal Islamic courts**” and the judges were Algerian and Muslim. ( مرمول، دروس في مقياس قانون الأسرة الجزائري ص 1 "ترجمتنا")

As for those who had the French nationality in accordance with the decree of **GREMIEUSE** dated in **1870**, the Jutes and the colonists, they were all subject to the French law.

France tried to unify the family code in the early 20<sup>th</sup> century through the project of the **Brigadier Marcel MORD**. Then, it enacted the first written and organized code that governed the personal status which is N° **778/57** dated on **11/07/1957**.

### **1.1.3 Stage 03: the period between 1962 and 1984**

In 1962, Algeria got back its independence and became no more subordinate to the French courts. The “legal Islamic courts” were annulled, the code 778/57 dated on 11/07/1957 was still in force until it was annulled by the order dated on 05/07/1975. Many codes were enacted in all fields except that governing the family despite the fact that many bills were made such as the bill of 1963, then that of 1966, then 1973, then 1980, then 1982 and the discussions and dialogues on this matter persisted until June 09<sup>th</sup>, 1984 when the code N°11/84 bearing family code was finally enacted.

The main reason of this delay was due to the persisting controversy between those who supported to enact the Family code from the Sharia “Islamic law” and those who supported it to be made from the western laws. ( مرمول، دروس في مقياس قانون الأسرة الجزائري ص 2 "ترجمتنا")

### **1.1.4 Stage 04: the period starting from 1984 to 2005**

Algeria has now its own personal status code called “**the Family Code**”. However, since it was enacted, this code was a controversial subject because of the ambiguity and the lack of some of its provisions. Some called it to be annulled while others called it to be modified. In fact, in **2005**, the Algerian Family Code was modified under the presidency of Abdelaziz Bouteflika. ( مرمول، دروس في مقياس قانون الأسرة الجزائري ص 3 "ترجمتنا")

## **1.2 Definition of the 2005 Family Code of Algeria**

Because of the controversial 1984 Family Code, the government of Abdelaziz Bouteflika gathered a commission of 52 members who were religious, sociologists, doctors and jurists whose commission was to revise and amend the Family Code of 1984.

In view of the recommendations and the propositions of this commission, the new Family Code was enacted on **June 09<sup>th</sup>, 2005** by the People's National Assembly presided at that time by Rabah BITAT. By this modification, some articles were abrogated while others were added and some were slightly modified.

The modification touched the first book related to marriage and its dissolution and the second book related to the legal representation. The third book related to inheritance and the fourth book related to legacies were not subject to the modification.

## **1.3: The reasons that led to the modification of the Family Law of June 09<sup>th</sup>, 1984**

The Family Code of Algeria includes strong elements of the Islamic Law "Sharia", its main source. As a result, it was praised by the Islamists whereas condemned by Secularists and Feminists who according to them this code:

Relegates the woman to the status of a minor since she can not marry without a guardian, institutionalizes polygamy, permits the man, in case of divorce to conserve the matrimonial home without obliging him to ensure maintenance for his family while the State does nothing to provide housing or financial support for divorced mothers, permits appeal of divorce rulings which was a method men were able to use to delay divorce and retain control over their wives and limits the right for divorce for women, grants women smaller shares of inheritance than men, prohibits the marriage of an Algerian woman with a non-Muslim man...etc.

Since 1984, war veterans and younger feminists have joined together to protest ceaselessly against the Family Code such as Fettouma Ouzeguène, Akila Ouared, Zhor Zerari, Zohra Drif, lawyer and senator (and spouse of Rabah Bitat), or Louisa Hanoune. In 1985, one year after its promulgation, the first independent women association was born. In 1990, there were millions of women protesting in the streets claiming the abrogation of this code. In March 08<sup>th</sup>, 1997, 14 associations launched a petition of one million signatures on 22 amendments to be done on this code coming from the workshop of Rabéa Mechernène, minister of solidarity at that time. In 2003, a campaign called “20 years barakat” (20 years, it is enough!) gathering many women associations was launched against the Family Code claiming its immediate abrogation.( SALHI, p 29/28)

As a result, President Abdelaziz Bouteflika has declared that it must be revised in the spirit of universal human rights and Islamic law. In fact, on February 27<sup>th</sup>, 2005, the Algerian Family Code was finally amended. However, reactions after this modification were mixed: Lachhab of the Islamist El Islah party declared that "We oppose these amendments which are contrary to Sharia, and thus to article 2 of the Constitution," whereas Nouria Hafsi of the pro-government RND declared "These timid amendments put forward a modern reading of the Sharia; the rights of women will finally be recognized by law". As for the feminist associations and left parties, they maintain their claim concerning the abrogation of the code.

#### **1.4: The main dispositions subject to the modification of 2005**

After the debates that followed the promulgation of the Code in 1984, the code was subject to some modifications mainly in the following dispositions:

##### **1.4.1 Marriage**

- The age of marriage is fixed to 19 years old for both sexes.

- The wali “woman’s guardian” of the future spouse is maintained but his role is limited since he becomes just a representative and can no more impose his decision over her marriage.
- The right to polygamy is also maintained but restricted through the authorization of the judge and the consent of the previous as well as the future wife.
- The two spouses shall submit a medical document before contracting marriage.
- Artificial insemination can be granted by the judge.

#### **1.4.2 Divorce**

- In case of divorce, the husband shall ensure an accommodation for his minor children and the divorced wife acquires the right to parental authority.
- Women have the right to stipulate in the marriage contract the conditions related to polygamy and her employment and to petition for divorce in case the husband does not fulfill the conditions stipulated in the marriage contract.
- The right of women to make khula can be done without the consent of the husband.

#### **1.4.3 Filiation**

The filiation of the Algerian nationality by the mother is finally recognized and women may transfer their nationality to their children born of non-Algerian men. Moreover, the judge may now resort to scientific examination to establish filiation.

### **1.5 The elements of the new Family Code**

**1.5.1 The Books:** A book is a main and heading division that includes all the titles, chapters, sections and articles of the code. The Algerian Family Code is constituted of four books:

- 1- **Marriage and its dissolution:** It is the longer book among the fourths since it constitutes the third (1/3) of the Code. It includes two titles that of marriage which encloses five chapters: 1. Engagement and marriage, 2. Marriage impediments, 3.

Null and void marriage, 4. The spouses rights and obligations 5. Filiation and that of divorce divided into three chapters: 1. Divorce, 2. Marriage effects 3. Maintenance. It starts from the article N° 04 and finishes with the article N° 80. Most of its articles were subject to modification.

- 2- **The legal representation:** It is only divided into the following seven chapters: 1. General provisions, 2. Legal guardianship, 3. Testamentary guardianship, 4. Court-appointed guardianship, 5. Legal interdiction, 6. The missing person and the absentee, 7. The kafala “adoption according to Islamic Law”. It starts from article N° 81 and ends with the article N° 125. This book was also subject to modification.
- 3- **Inheritance:** This book includes ten chapters. It starts with the article N° 126 and ends with the article N° 183. Any of its articles was neither changed nor modified.
- 4- **Testamentary dispositions (wills-donations-wakf).** : It is constituted of four chapters. It starts with the article N° 184 and ends with the article N° 220. Any of its articles was neither changed nor modified.

**1.5.2: The Titles:** A title is a division that follows the book and that includes a part of it. It is the heading of some acts and codes. It may be a long title or a short title.

**1.5.3 The Chapters:** A chapter is a third division after the book and the title. It is a part of a legal document or agreement that deals with a particular point. It is divided into sections.

**1.5.4 The Sections:** A section is a fourth division into which the Code is divided. It includes the articles.

**1.5.5 The articles:** An article is a separate clause or paragraph of a legal document or agreement, typically one outlining a single rule or regulation. It is the main clause that bears the dispositions. The Algerian Family Code includes **224** articles of which some were subject to modification either by being completed or by adding new ones. In the whole, eight articles were added: **03 bis, 07 bis, 08 bis1, 08 bis2, 09 bis, 45 bis, 53 bis**

**and 57 bis.** Meanwhile, five articles were abrogated because of their ambiguity and contradiction and of being the heart of debates: **articles 12, 20, 38, 39 and 63.**

### **1.6: The main features of the Family Code of Algeria**

The main features of the Family Code of Algeria are the followings:

- 1- It takes its main source from Sharia “Islamic Law”, the reason why it includes terms purely quoted from the Quran and the Hadith “The sayings of the Prophet Mohamed PBUH” as well as the French Law.
- 2- It is written in a legal Arabic, but it has an official translation into French.
- 3- It was first enacted on June 09<sup>th</sup>, 1984 and amended once on February 27<sup>th</sup>, 2005.
- 4- It is composed of four (04) books divided into 224 articles.

All instances and matters related to the personal status in Algeria are governed by the Family Code.

**CHAPTER 02**

**TRANSLATION INTO ENGLISH**

**OF THE 1<sup>ST</sup> AND 2<sup>ND</sup> BOOK**

**OF THE FAMILY CODE**

**OF ALGERIA**

**People's Democratic Republic of Algeria**

**The Republic Presidency**

**The Government General Secretary**

**FAMILY CODE**

Law N° 84-11 dated on June 09<sup>th</sup>, 1984 bearing Family Code, Modified and Completed by the Order N° 05-02 dated on February 27<sup>th</sup>, 2005.

The President of the Republic,

- In view of the constitution, in particular its articles 151-2 and 152,
- In view of the People's National Assembly decisions,

**Promulgates the hereinafter law**

**General Provisions**

**Article 01:**

All the relationships between the family members are governed by the provisions of this law.

**Article 02:**

The family is the basic cell of the society; it is composed of persons united by marriage links and family ties.

**Article 03:**

The family is based, in its way of life, on union, solidarity, good harmony, safe education and elimination of social harms.

**Article 03 bis: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The Director of Public Prosecution is an essential party in all instances tending to the application of the hereby law.

***First Book: Of Marriage and its Dissolution***

***Title I: Of Marriage***

***Chapter I: Of Engagement and of Marriage***

***Section I: Of Engagement***

**Article 04: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

A marriage is a consensual contract made between a man and a woman according to the legal forms. It has, among its aims, to found a family based on affection, leniency and mutual assistance, to protect the spouses and to preserve family relationships.

**Article 05: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The engagement constitutes a promise of marriage

Either party can renounce from engagement.

If a material or moral harm results from this renouncement to one of the two parties, a compensation may be issued. If the renouncement is from the suitor, he can not claim for the restitution of any gift. He shall return back to the fiancée the gifts not yet consumed or their value.

If the renouncement is from the fiancée, she shall return back to the suitor the gifts not yet consumed or their value.

**Article 06: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The Fatiha “the expression of offer of the bride’s wali and acceptance of the groom followed with the reading of the Surah Al-Fatiha” “a division of al-Quran” connected with engagement does not constitute a marriage.

However, the Fatiha connected with engagement in a contractual session constitutes a marriage if the consent of the two parties as well as the marriage requirements are fulfilled in accordance with the provisions of the article 09 bis of the hereby law.

## ***Section II: Of marriage***

**Article 07: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The capacity to marry is valid over 19 years of age for both man and woman. Meanwhile, the Judge can grant a special exemption from age limit for an interest or a necessary reason provided that the two parties are capable of consummating marriage.

The minor spouse acquires the capacity to take legal action regarding the rights and duties resulted from the marriage contract.

**Article 07 bis: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The future spouses shall present a medical document dated of less than three months certifying that they are not suffering from any diseases or having a factor of risk that contradicts with marriage.

Before drawing up the marriage contract, the notary public or the registrar shall certify that both parties have been submitted to medical examinations and that they know about the diseases or the factors of risk that contradict with marriage. This is to be mentioned in the marriage contract.

The conditions and the terms related to the application of this article are fixed by the regulations.

**Article 08: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

It is allowed to contract marriage with more than one wife under sharia “Islamic law” provided that the motive is justified and the conditions and the equity intent are met.

The husband shall inform his previous wife as well as his future one about his intention to remarry and present a marriage permission application to the tribunal president of the matrimonial home place.

The tribunal president can permit the new marriage if he certifies the consent of both wives and if the husband proves the justifying motive and his ability to offer equity and the necessary conditions of matrimonial life.

**Article 08 bis: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

In case of fraud, every wife can file a petition for divorce against the husband.

**Article 08 bis 1: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The new marriage is annulled, before its consummation, if the husband has not acquired the permission of the judge in accordance with the conditions provided in the article 08 above.

### **The marriage requirements**

**Article 09: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The marriage contract is concluded by the exchanging consent of the two spouses.

**Article 09 bis: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The marriage contract shall satisfy the following requirements:

- The ability to marry.
- The mahr “dowry”.
- The wali “woman’s guardian”.
- Two witnesses.
- Exemption of legal impediments of marriage.

**Article 10:**

The consent ensues from the offer of one party and the acceptance of the other one expressed in terms signifying the legal marriage.

The offer and the consent of the handicapped person expressed by any forms, either written or gesticulated, signifying the marriage in the language and in the custom are valid.

**Article 11: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The woman of legal age concludes her contract of marriage in presence of her wali “woman’s guardian”, who can be her father or one of her relatives or any other person of her choice.

Without prejudice to the provisions of the article 07 of the herein law, the minors marriage is concluded by their legal guardians who can be their parents or one of their close relatives. The judge is the legal guardian for those who do not have a guardian.

**Article 12: Abrogated. (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

**Article 13: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The wali “woman’s guardian”, either the parent or any other persons, shall not force into the marriage the minor under his guardianship and shall not marry her without her consent.

**Article 14:**

The mahr “dowry” is what is given to the future wife as a gift given with a good heart, either a sum of money or anything legally lawful. This mahr “dowry” becomes her property that she uses freely.

**Article 15: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The mahr “dowry” is specified in the marriage contract either its payment is immediate or postponed.

In case the amount of the mahr “dowry” is not specified, sdaq el mithl “the dowry of parity” is to be paid to the wife.

**Article 16:**

The wife deserves the whole of her mahr “dowry” in case the marriage is consummated or the husband is dead. Meanwhile, she deserves its half in case of divorce before the marriage is consummated.

**Article 17:**

If, before consummating marriage, there is a dispute between the spouses or their heirs about the mahr “dowry” and none of them provides a proof, it is ruled on, under oath, in favor of the wife or her heirs. If the dispute is after consummating marriage, it is ruled on, under oath, in favor of the husband or his heirs.

***Section III: Of marriage contract and its proof***

**Article 18: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The marriage contract is concluded before a notary public or a civil servant legally entitled taking into consideration the provisions of the articles 09 and 09a of the hereby law.

**Article 19: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The two spouses can stipulate, in the marriage contract or in a subsequent authentic contract, all the clauses they consider to be necessary in particular those concerning polygamy and wife’s employment unless these conditions are not contradicted with the provisions of the hereby law.

**Article 20:** Abrogated.

**Article 21:**

The provisions of the Civil Status Code are applicable in the procedures of marriage contract registration.

**Article 22: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The marriage is proved by the delivery of an extract of the Civil Status Register. In case the marriage is not registered, it is validated by a judgment.

The marriage validation judgment shall be registered in the Civil Status at the behest of the Director of Public Prosecution.

## ***Chapter II: Of marriage impediments***

### **Article 23:**

Both spouses shall be free of any permanent or temporary legal impediments to the legal marriage.

### **Article 24:**

The permanent marriage impediments are:

- Consanguinity.
- Affinity, relationship by marriage.
- Suckling.

### **Article 25:**

Women prohibited by consanguinity are:

Mothers, daughters, sisters, paternal and maternal aunts, brother's daughters and sister's daughters.

### **Article 26:**

Women prohibited by affinity are:

- The wife's ascendants immediately after the marriage contract is concluded.
- The wife's descendants if marriage is consummated.
- Widowed or divorced women of the husband's ascendants to infinity.
- Widowed or divorced women of the husband's descendants to infinity.

### **Article 27:**

Women prohibited by suckling are as the same as those prohibited by consanguinity.

### **Article 28:**

The infant, with the exclusion of his brothers and sisters, is considered to be a son of his wet mother and her husband and a brother of their children. The prohibition shall be applied on him and on his descendants.

**Article 29:**

The prohibition based on suckling is effective only if this former happens before weaning or during the two first years of the infant's life whatever the quantity of the sucking milk is.

**Article 30: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)**

Women temporarily prohibited are:

- A woman already married.
- A woman in her iddah "legal waiting period" following divorce or death of her husband.
- A woman repudiated three times by the same husband.

It is also temporarily prohibited:

- Having two sisters in wedlock at the same time, or the woman and her paternal or maternal aunt even if she is a first, a half or a foster sister.
- The marriage of a Muslim woman with a non-Muslim man.

**Article 31: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)**

The marriage of Algerian men and Algerian women with foreigners of both genders obeys to the regulations provisions.

***Chapter III: Of null and void marriage***

**Article 32: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)**

The marriage is considered null and void if it involves an impediment or a clause incompatible with the contract requirements.

**Article 33: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)**

The marriage is considered null and void if the condition of consent is invalidated.

The marriage contracted without the presence of two witnesses, the mahr "dowry" or the wali "woman's guardian" in case he is obligatory, is annulled before it is consummated

and does not result in a mahr “dowry”. If it is consummated, it is confirmed by sdaq el mithl “the dowry of parity”.

**Article 34:**

Every marriage contracted with one of the prohibited women is null and void before and after it is consummated. However, the filiation resulted from this marriage shall be established and the woman shall consume her iddah “legal waiting period”.

**Article 35:**

If the marriage contract includes a contradicted condition, the marriage is null and void but the contract is valid.

***Chapter IV: Of spouses’ rights and obligations***

**Article 36: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)**

The two spouses shall:

- 1- Maintain the marital ties and the common life obligations.
- 2- Live together honorably in mutual respect, affection and leniency.
- 3- Assist each other in maintaining the family interests, protecting the children and providing safe education.
- 4- Consult each other in matters of family management and births remoteness.
- 5- Respect and visit each one’s parents and relatives.
- 6- Maintain the family ties and treat the parents and relatives with respect and,
- 7- Visit each one’s parents and relatives and host them honorably.

**Article 37: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)**

Each of the two spouses has his own patrimony.

However, they may, in the marriage contract or in a subsequent authentic contract, agree upon the community property they acquired during their matrimonial life and the shares returning to each one.

**Article 38:** Abrogated. (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)

**Article 39:** Abrogated. (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)

### ***Chapter V: Of filiation***

**Article 40:** (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)

The filiation is established by the valid marriage, acknowledgement, evidence, the invalid marriage and any marriage annulled after consummation in accordance with articles 32, 33 and 34 of the hereby law.

The judge may resort to scientific means in order to establish filiation.

**Article 41:**

The child is ascribed to his father when the marriage is valid, the marital relations are possibly established and the father does not disown him by the legal procedures.

**Article 42:**

The minimum pregnancy period is six months, and the maximum is ten (10) months.

**Article 43:**

The child is ascribed to his father if he was born during the ten (10) months following the separation or the death date.

**Article 44:**

The acknowledgement of filiation, that of paternity or maternity, even if made on a deathbed, establishes the filiation of the child of unknown paternity provided that it is approved by the reason and the custom.

**Article 45:**

The acknowledgement of paternity apart from filiation, either paternal or maternal, shall prevail over the person who acknowledges it only if he confirms it.

**Article 45bis:** (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)

The two spouses may have recourse to artificial insemination.

Artificial insemination submits to the following conditions:

- The marriage shall be legally contracted.
- The insemination shall be carried out after the consent of both spouses and during their lifetime.
- It shall be done only by the husband's sperm and the wife ovum with the exclusion of any other person.

It is prohibited to have recourse to the artificial insemination through the surrogacy arrangement.

**Article 46:**

Adoption is prohibited by the sharia "Islamic law" and by the law.

***Title II: Of dissolution of marriage***

**Article 47:**

The dissolution of marriage arises from either divorce or death of husband or wife.

***Chapter I: Divorce***

**Article 48: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)**

A divorce is a dissolution of marriage subject to the article 49 below. It arises from the willingness of the husband, from the consent of both parties or at the request of the wife within the limits of the provisions of the articles 53 and 54 of the hereby law.

**Article 49: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)**

The divorce is made only by a judgment preceded by several reconciliation attempts carried out by the judge during a period not to exceed three (03) months starting from the date of the divorce claim.

The judge shall establish a report signed by him, the clerk of the court and the two parties in which all the proceedings and the results of the reconciliation attempts are mentioned.

Divorce judgments are obligatory transcribed at the behest of the Director of Public Prosecution in the civil status.

**Article 50:**

The husband who returns back his wife during the period of reconciliation attempts does not need a new marriage contract. Meanwhile, if the wife return happens after the divorce judgment, a new marriage contract shall be concluded.

**Article 51:**

The husband who repudiates his wife three consecutive times can not take her back unless she marries another man who divorces her or dies after having lived together.

**Article 52: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)**

If the judge considers that the husband has abusively used his exclusive power of divorce, he grants the divorced wife damages for the harm she suffered from.

**Article 53:**

The wife may petition for divorce for the hereinafter reasons:

- 1- Failure to provide maintenance pronounced through judgment unless the wife has not been acquainted about the poverty of her husband at the time of marriage in accordance with articles 78, 79 and 80 of the law hereby.
- 2- Disablement preventing the aims of marriage from being achieved.
- 3- Husband's refusal to share his wife's bed for more than four (04) months.
- 4- Husband condemnation of crime dishonoring the family and making common and marital life no more possible.
- 5- Unreasonable absence from the home for more than one year and without leaving maintenance.
- 6- Breach of the provisions of the article 8 abovementioned.
- 7- Commitment of an open indecency.

- 8- Persistent discord between the two spouses.
- 9- Breach in the terms agreed upon in the marriage contract.
- 10- Any prejudice legally acknowledged.

**Article 53 bis: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)**

The judge may, in case he pronounces the divorce, order for damages in favor of the divorced wife due to the harm she suffered from.

**Article 54: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)**

The wife has the right to seek for divorce without the consent of her husband through khula “wife’s ability to petition a judge for a divorce” by paying him a sum of money.

If the two spouses do not agree on the sum of money of the khula “wife’s ability to petition a judge for a divorce” to be paid, the judge orders the payment of a sum not to exceed the value of the sdaq el mithl “dowry of parity” assessed on the date of the judgment.

**Article 55:**

In case one of the spouses violates the marital obligations, the judge may order for divorce and damages to the party who suffered from the harm.

**Article 56:**

If the disagreement worsens between the two spouses and the harm is not established, two arbitrators shall be appointed to reconcile them.

The two arbitrators, one from the husband’s family and another from the wife’s, appointed by the judge, shall submit a report of their mission within two months from the date of their appointment.

**Article 57: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005)**

The judgments issued as regards the divorce by repudiation, at the wife’s request or by khula are not submitted to be appealed except for their financial aspects.

Judgments issued as regards to custody can be appealed.

**Article 57bis: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The judge may rule, by virtue of a summary order on petition, on all the provisional measures especially those related to maintenance, custody, right of visit and accommodation.

## ***Chapter II: Of the effects of divorce***

### **The iddah “wife’s legal waiting period”**

#### **Article 58:**

The iddah “the legal waiting period” of a non-pregnant woman divorced after consummation of marriage shall be for three menstrual periods. A woman who passed the age of monthly courses shall take three months iddah from the date of the declaration of divorce.

#### **Article 59:**

The iddah of the wife of a deceased husband shall be of four months and ten days. It is the same prescribed period of the wife of a lost husband that shall commence on the date of the court ruling declaring the husband as lost.

#### **Article 60:**

The iddah of a pregnant woman expires on the date of delivery. The maximum pregnancy period is ten (10) months starting from the divorce or the husband’s death.

#### **Article 61:**

The divorced wife or the wife of a deceased husband shall not leave the matrimonial home as long as she is in her iddah except in case of committing an open indecency. She shall be entitled to alimony during her divorce iddah.

## **Child custody**

### **Article 62:**

Custody refers to the child caring for, schooling and education in the religion of his father as well as to the protection of his physical and moral health.

The custodian shall be fully capable to perform custody.

**Article 63:** Abrogated.

**Article 64: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The first person entitled to custody is the child's mother, then the father, the maternal grandmother, then the paternal grandmother, then maternal aunt, then the paternal aunt then to the closest relatives taking into consideration the child's best interests. The judge shall grant the right to visitation when ruling on the devolution of custody.

### **Article 65:**

The custody duration for a male child expires when he attains the age of ten (10) years. As for a female child, it expires when she attains the age of marriage capability. The judge prolongs this duration until sixteen (16) years old for the male child in case the custodian is his non remarried mother.

However, the ruling on the expiration of custody shall take the child's best interests into consideration.

### **Article 66:**

The right to custody for a female custodian is lapsed when she marries with an unmarriageable kin to the child. It is also lapsed by resignation provided that it does not prejudice the child's best interests.

**Article 67: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The right to custody is lapsed upon failure to satisfy any of the conditions stipulated in the article 62 above.

The woman employment does not constitute a reason for the lapse of the right to custody.

However, the child's best interests shall be taken into consideration in all cases.

**Article 68:**

In case the entitled to the right of custody does not claim it for more than a whole year and without a valuable excuse, his right is lapsed.

**Article 69:**

If the custodian desires to live in a foreign country, the judge may maintain the right of custody for him or withdraw it taking into consideration the child's best interests.

**Article 70:**

The right to custody of the maternal grandmother or the maternal aunt is lapsed in case she goes with the child to live with his mother remarried with an unmarriageable kin to the child.

**Article 71:**

The right to custody is restored as soon as the involuntary reason is shown to have been removed.

**Article 72: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

In case of divorce, the father shall provide, for the exercise of custody, for the beneficiary of the right to custody, a proper accommodation or failing that, pay its rent.

The custodian woman shall remain in the matrimonial home until the execution by the father to the judiciary judgment related to the accommodation.

**Disputes related to matrimonial home effects**

**Article 73: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

If a dispute happens between the two spouses or their heirs about the matrimonial home effects and neither of them provides evidence, the declaration of the wife or her heirs is

reliable on her oath regarding things used usually only by women, and that of the husband is liable on his oath regarding things used usually by men.

The common things between the spouses used by both man and woman are shared between them on the oath of each party.

### ***Chapter III: Of Maintenance***

#### **Article 74:**

Pursuant to the provisions of the articles 78, 79 and 80 of the hereby law, the husband shall provide for the maintenance of his wife from the date of the consummation of marriage or if she requires it upon evidence.

#### **Article 75:**

The father shall provide for the maintenance of his child unless he has no resources.

A male child shall be provided with maintenance until the age of majority. As for a female child, she shall be provided with maintenance until the consummation of her marriage.

The child maintenance persists in case the child is mentally or physically handicapped or if he is in schooling.

#### **Article 76:**

In case the father is unable to provide for the maintenance of the children, the mother becomes liable of this obligation if she is capable.

#### **Article 77:**

The descendants shall be liable for the maintenance of their ascendants and the ascendants shall be liable of the maintenance of their descendants according to capability, needs and the degree of blood relation regarding to succession.

#### **Article 78:**

The maintenance includes food, clothes, medical treatment, accommodation or its rent and all what is considered as necessary by usage and custom.

**Article 79:**

The judge takes into consideration the situation of the two spouses and their life circumstances while estimating the maintenance amount. This estimation shall not be reviewed before one year after the order is issued.

**Article 80:**

The maintenance starts on the date of the issue of the claim. It is up to the judge to rule on the payment of the maintenance upon evidence for a period not to exceed one year prior to the date the claim is issued.

***Second Book: Of legal representation***

***Chapter I: General provisions***

**Article 81:**

Any person who is incapacitated, wholly or partially, due to his young age, insanity, dementia or prodigality is legally represented by a legal guardian, a testamentary guardian or a guardian ad litem in accordance with the provisions of the hereby law.

**Article 82:**

The acts of a person having not yet attained the age of discernment due to his young age, in accordance to article 42 of the Civil Code are not valid.

**Article 83:**

The acts of a person who has attained the age of discernment without attaining the age of majority in accordance to the article 43 of the Civil Code are valid in case they are beneficial to him and not valid in case they are harmful.

These acts are submitted to the authorization of the legal guardian or the testamentary guardian if there is uncertainty between the benefit and the harm.

In case of dispute, they are submitted to the court.

**Article 84:**

The judge may permit the person who has attained the age of discernment to dispose partially or wholly in his property at the request of a person with a stake in the matter. Meanwhile, he may withdraw his decision whenever he obtains the evidence.

**Article 85:**

The acts of the insane, the demented and the prodigal person committed in one of these states are not valid.

**Article 86:**

The person who attains the age of majority and is not placed under legal interdiction is fully capable in accordance with the provisions of the article 40 of the Civil Code.

***Chapter II: Of Legal guardianship***

**Article 87: (Order N° 05-02 dated on February 27<sup>th</sup>, 2005).**

The father is the legal guardian of his minor children. After his death, the guardianship passes legally to the mother.

In case of absence or obstacle of the father, the mother stands in for him in carrying out the urgent acts related to their children.

In case of divorce, the judge grants the legal guardianship to the parent to whom the custody is entrusted.

**Article 88:**

The legal guardian shall trustworthily manage the property of the minor. He is responsible in accordance with the provisions of the common law.

He shall request the authorization of the judge to accomplish the following acts:

- 1- Real estate sale, sharing out and mortgage and making the deal.
- 2- Sale of movable property of a particular importance.
- 3- Investing the minor's properties by lending, borrowing or participation action.

- 4- Renting the minor's properties for more than three (3) years or exceeding his age of majority by one (1) year.

**Article 89:**

The judge shall take into consideration while granting the authorization the minor's necessity and best interests and that the property sale takes place in the public auction.

**Article 90:**

If the legal guardian's interests are contradicted with those of the ward, the judge appoints an ad hoc administrator, automatically or at the request of a person with a stake in the matter.

**Article 91:**

The legal guardian task comes to an end by:

- 1- His incapacity.
- 2- His death.
- 3- His judiciary or legal interdiction.
- 4- Revoking his legal guardianship.

***Chapter III: Of testamentary guardianship***

**Article 92:**

The father or the grandfather may designate a testamentary guardian for the minor child if he has no mother to look after him or if her incapacity is legally established. In the event there are many testamentary guardians, the judge shall choose the most qualified pursuant to the article 86 of the hereby law.

**Article 93:**

The testamentary guardian must be Muslim, sane, adult, capable, trustworthy and good administrator. The judge may revoke the guardianship from him if he does not fulfill the above mentioned conditions.

**Article 94:**

The guardianship shall be submitted to the judge soon after the father death so that he confirms or revokes it.

**Article 95:**

The testamentary guardian has the same administration powers as the legal guardian in accordance with articles 88, 89 and 90 of the hereby law.

**Article 96:**

The mission of the testamentary guardian comes to an end in the following cases:

- 1- The death of the ward or the incapacity or the death of the testamentary guardian.
- 2- When the wards attains the age of majority, unless he is placed under legal interdiction through a judgment.
- 3- When the mission for which the testamentary guardian was designated expires.
- 4- When the excuse invoked to resign from the mission has been accepted.
- 5- When he/she is removed at the request of a person with a stake in the matter in case it is proved that his/her administration threatens the minor interests.

**Article 97:**

The testamentary guardian whose mission comes to an end shall return the property being under his responsibility and submit its statement with the supporting documents to his successor or to the minor who has attains the age of majority or his heirs within a deadline not to exceed two months after the expiration of his mission.

He shall also submit a copy of the abovementioned statement to the court.

In the event the testamentary guardian is dead or missed, his heirs shall return, through judicial means, the ward's property to whom it may concern.

**Article 98:**

The testamentary guardian is liable for all damages caused by his negligence on the ward's property.

***Chapter IV: Of court-appointed guardianship***

**Article 99:**

The guardian ad litem is a guardian appointed by the court in case there is no legal guardian or testamentary guardian to administer a person wholly or partially incapable at the request of one of his parents, a person with a stake in the matter or the Director of Public Prosecution.

**Article 100:**

The guardian ad litem surrogates the testamentary guardian and is submitted to the same provisions.

***Chapter V: Of legal interdiction***

**Article 101:**

Is considered interdicted person every person who has attained the age of majority and is insane, demented or prodigal or is subjected to one of these states.

**Article 102:**

The legal interdiction is established at the request of one of the parents, a person with a stake in the matter or the Director of Public Prosecution.

**Article 103:**

The legal interdiction shall be established through a judgment. The judge may relay on experts to prove its reasons.

**Article 104:**

In the event the person placed under legal interdiction has neither legal guardian nor testamentary guardian, the judge shall appoint through the same legal interdiction

judgment a guardian ad litem whose mission is to look after him and to administer his matters pursuant to the provisions of the article 100 of the hereby law.

**Article 105:**

The person who is subject to a request to be legally interdicted shall be allowed to defend his interests. The court may appoint a defender for him if it considers it useful.

**Article 106:**

The legal interdiction judgment is subject to different means of appeal and shall be publicized.

**Article 107:**

All the acts committed after the judgment by the person placed under legal interdiction are considered null and void. These acts are also null and void if they are committed before the judgment and the causes of the legal interdiction are obvious and notorious.

**Article 108:**

The legal interdiction can be removed if its causes are disappeared and at the request of the concerned person.

***Chapter VI: Of the missing person and the absentee***

**Article 109:**

The missing person is the absent person whose place is unknown, and it can not be known if he is alive or dead. He can be declared as missing person only by a judgment.

**Article 110:**

The absentee prevented for a whole year from returning to his home and administering his matters by himself or by a representative due to any force majeure is considered as a missing person.

**Article 111:**

The judge who rules on the absence judgment shall undertake an inventory of the missing person's property and shall appoint a guardian ad litem from among the parents or others to administer his property and to receive what he deserves from the inheritance or the liberality pursuant to the article 99 of the hereby law.

**Article 112:**

The missing person or the absentee's wife may petition for divorce in accordance to the fifth paragraph of the article 53 of the hereby law.

**Article 113:**

A missing person's death judgment may be ruled on in time of wars and exceptional circumstances after four (04) years from the date of investigation. In cases in which peace prevails, the judge is empowered to determine the appropriate period after four years expiration.

**Article 114:**

The judgment bearing absence or death of the missing person is issued at the request of one of the heirs, a person with a stake in the matter or the Director of Public Prosecution

**Article 115:**

The missing person shall not be inherited and his properties shall not be shared only after the judgment bearing his death is issued. If he appears again or show any sign of life, the rest of his property and the value of what has been sold of it shall be restituted to him.

***Chapter VII: Of kafala "adoption according to the Islamic Law"***

**Article 116:**

The kafala "adoption according to the Islamic Law" is the commitment to undertake voluntarily the maintenance, the education and the welfare of a minor child in the same manner a father would for his own child. The kafala is established through a legal act.

**Article 117:**

The kafala shall be issued before the judge or the Notary Public with the consent of the child in the event he has a mother and a father.

**Article 118:**

The kafala parent “the person who adopts a child in kafala process” shall be Muslim, sane and capable to take care of the kafala child “the child adopted in kafala process” and to protect him.

**Article 119:**

The kafala child can be either of known or unknown filiation.

**Article 120:**

If the child parents are known, he keeps his original filiation. In case they are not known, the article 64 of the Code of Civil Procedures shall apply.

**Article 121:**

The kafala grants to the kafala parent the legal guardianship and all the family and school allowances of the legitimate child.

**Article 122:**

The kafala parent administers the property of the kafala child that he owns through inheritance, will or donation according to the child’s best interests.

**Article 123:**

The kafala parent may bequeath or donate to the kafala child some of his property within the limit of the third. Over the value of the third is considered as null unless the heirs show their consent.

**Article 124:**

At the event the parents or one of them desire to return their child under their guardianship, the child has the right, if he attains the age of discernment, to choose with whom he likes to

stay. In case he has not yet attained the age of discernment, he can return only by an authorization of the judge taking into consideration the child's best interests.

**Article 125:**

The giving-up of the kafala shall be established before the jurisdiction that has granted it after notification to the Director of Public Prosecution. In case of death, the kafala shall be transferred to the heirs if they committed to perform it. In the contrary case, the judge grants the minor guardianship to the institution competent in assistance.

# الجمهورية الجزائرية الديمقراطية الشعبية

## رئاسة الجمهورية

### الأمانة العامة للحكومة

## قانون الأسرة

القانون رقم 84-11 المؤرخ في 09 رمضان عام 1404 الموافق لـ 09 يونيو سنة 1984،  
المتضمن قانون الأسرة المعدل والمتمم

إنّ رئيس الجمهورية،

- بناء على الدستور ولاسيما المادّتان 152-2 و154 منه،

- وبناء على ما أقرّه المجلس الشعبي الوطني،

يصدر القانون الآتي نصّه

### أحكام عامّة

#### المادة 01:

تخضع جميع العلاقات بين أفراد الأسرة لأحكام هذا القانون.

#### المادة 02:

الأسرة هي الخلية الأساسية للمجتمع وتتكون من أشخاص تجمع بينهم صلة الزوجية وصلة القرابة.

#### المادة 03 :

تعتمد الأسرة في حياتها على الترابط والتكافل وحسن المعاشرة والتربية الحسنة وحسن الخلق ونبذ الآفات الاجتماعية.

#### المادة 03 مكرر: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

تعدّ النّياية العامّة طرفا أصليا في جميع القضايا الرامية إلى تطبيق أحكام هذا القانون.

الكتاب الأول: الزواج وانحلاله  
الباب الأول: الزواج  
الفصل الأول: الخطبة والزواج  
القسم الأول: في الخطبة

**المادة 04 :** (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

الزواج هو عقد رضائي يتم بين رجل وامرأة على الوجه الشرعي، من أهدافه تكوين أسرة أساسها المودة والرحمة والتعاون وإحصان الزوجين والمحافظة على الأنساب.

**المادة 05:** (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

الخطبة وعد بالزواج.

يجوز للطرفين العدول عن الخطبة.

إذا ترتب عن العدول عن الخطبة ضرر مادي أو معنوي لأحد الطرفين جاز الحكم له بالتعويض.

لا يسترد الخاطب من المخطوبة شيئاً مما أهداها إن كان العدول منه، وعليه أن يرد للمخطوبة ما لم يستهلك مما أهدته له أو قيمته.

وإن كان العدول من المخطوبة فعليها أن ترد للخاطب ما لم يستهلك من هدايا أو قيمته.

**المادة 06:** (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

إن اقتران الفاتحة بالخطبة لا يعد زواجا.

غير أن اقتران الفاتحة بالخطبة بمجلس العقد يعتبر زواجا متى توافر ركن الرضا وشروط الزواج المنصوص عليها في المادة 09 مكرر من هذا القانون.

## القسم الثاني: في الزواج

### المادة 07: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

تكتمل أهلية الرجل والمرأة في الزواج بتمام 19 سنة، وللقاضي أن يرخص بالزواج قبل ذلك لمصلحة أو ضرورة، متى تأكدت قدرة الطرفين على الزواج.  
يكتسب الزوج القاصر أهلية التقاضي فيما يتعلق بآثار عقد الزواج من حقوق والتزامات.

### المادة 07 مكرّر: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

يجب على طالبي الزواج أن يقدموا وثيقة طبية، لا يزيد تاريخها عن ثلاثة (3) أشهر تثبت خلوهما من أي مرض أو أي عامل قد يشكل خطراً يتعارض مع الزواج.  
يتعين على الموثق أو ضابط الحالة المدنية، أن يتأكد قبل تحرير عقد الزواج من خضوع الطرفين للفحوصات الطبية، ومن علمهما بما قد تكشف عنه من أمراض أو عوامل قد تشكل خطراً يتعارض مع الزواج، ويؤشّر بذلك في عقد الزواج.  
تحدد شروط وكيفيات تطبيق هذه المادة عن طريق التنظيم.

### المادة 08: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

يسمح بالزواج بأكثر من زوجة واحدة في حدود الشريعة الإسلامية متى وجد المبرر الشرعي وتوفرت شروط ونية العدل.  
يجب على الزوج إخبار الزوجة السابقة والمرأة التي يقبل على الزواج بها وأن يقدم طلب الترخيص بالزواج إلى رئيس المحكمة لكان مسكن الزوجية.

يمكن لرئيس المحكمة أن يرخص بالزواج الجديد، إذا تأكد من موافقتهما وأثبت الزوج المبرر الشرعي وقدرته على توفير العدل والشروط الضرورية للحياة الزوجية.

**المادة 08 مكرّر: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)**  
في حالة التدليس، يجوز لكل زوجة رفع دعوى قضائية ضد الزوج للمطالبة بالتطليق.

**المادة 08 مكرّر 1: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)**  
يفسخ الزواج الجديد قبل الدخول، إذا لم يستصدر الزوج ترخيصاً من القاضي وفقاً للشروط المنصوص عليها في المادة 8 أعلاه.

### أركان الزواج

**المادة 09: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)**  
ينعقد الزواج بتبادل رضا الزوجين.

**المادة 09 مكرّر: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)**  
يجب أن تتوفر في عقد الزواج الآتية:

-أهلية الزواج،

-الصداق،

-الولي،

-شاهدان،

-انعدام الموانع الشرعية للزواج.

### المادة 10 :

يكون الرضا بإيجاب من أحد الطرفين وقبول من الطرف الآخر بكل لفظ يفيد معنى النكاح شرعاً.

ويصح الإيجاب والقبول من العاجز بكل ما يفيد معنى النكاح لغة أو عرفاً كالكتابة والإشارة.

**المادة 11: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)**

تعقد المرأة الراشدة زوجها بحضور وليها وهو أبوها أو أحد أقاربها أو أي شخص آخر تختاره دون الإخلال بأحكام المادة 07 من هذا القانون، يتولى زواج القصر أولياؤهم وهم الأب، فأحد الأقارب الأولين والقاضي وليٌّ من لا وليَّ له.

**المادة 12 : ملغاة (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)**

**المادة 13: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)**

لا يجوز للوليّ أبا كان أو غيره أن يجبر القاصرة التي هي في ولايته على الزواج، ولا يجوز له أن يزوجها بدون موافقتها.

**المادة 14 :**

الصداق هو ما يدفع نحلة للزوجة من نقود أو غيرها من كل ما هو مباح شرعا وهو ملك لها تتصرف فيه كما تشاء.

**المادة 15: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)**

يحدد الصداق في العقد سواء كان معجلا أو مؤجلا. في حالة عدم تحديد قيمة الصداق، تستحق الزوجة صداق المثل.

**المادة 16 :**

تستحق الزوجة الصداق كاملا بالدخول، أو بوفاة الزوج، وتستحق نصفه عند الطلاق قبل الدخول.

## المادة 17 :

في حالة النزاع في الصداق بين الزوجين أو ورثتهما وليس لأحدهما بينة وكان قبل الدخول، فالقول للزوجة أو ورثتها مع اليمين، وإذا كان بعد البناء فالقول للزوج أو ورثته مع اليمين.

### القسم الثالث: في عقد الزواج وإثباته

## المادة 18: (أمر رقم 02-05 المؤرخ في 27 فبراير 2005)

يتم عقد الزواج أمام الموثق أو أمام موظف مؤهل قانونا مع مراعاة ما ورد في المادتين (9 و9 مكرر) من هذا القانون.

## المادة 19: (أمر رقم 02-05 المؤرخ في 27 فبراير 2005)

للزوجين أن يشترطا في عقد الزواج أو في عقد رسمي لاحق كل الشروط التي يريانها ضرورية، لاسيما شرط عدم تعدد الزوجات وعمل المرأة، ما لم تتناف هذه الشروط مع أحكام هذا القانون.

## المادة 20 : ملغاة (أمر رقم 02-05 المؤرخ في 27 فبراير 2005)

## المادة 21:

تطبق أحكام قانون الحالة المدنية في إجراءات تسجيل عقد الزواج.

## المادة 22: (أمر رقم 02-05 المؤرخ في 27 فبراير 2005)

يثبت الزواج بمستخرج من سجل الحالة المدنية، وفي حالة عدم تسجيله يثبت بحكم قضائي. يجب تسجيل حكم تثبت الزواج في الحالة المدنية بسعي من النيابة العامة.

## الفصل الثالث: موانع الزواج

### المادة 23:

يجب أن يكون كل من الزوجين خلوا من الموانع الشرعية المؤبدة والمؤقتة.

### المادة 24:

موانع النكاح المؤبدة هي:

- القرابة.
- المصاهرة.
- الرضاع.

### المادة 25:

المحرمات بالقرابة هي:

الأمهات، والبنات، والأخوات، والعمات، والخالات، وبنات الأخ، وبنات الأخت.

### المادة 26:

المحرمات بالمصاهرة هي:

- أصول الزوجة بمجرد العقد عليها،
- فروعها إن حصل الدخول بها،
- أرامل أو مطلقات أصول الزوج وإن علوا،
- أرامل أو مطلقات فروع الزوج وإن نزلوا.

### المادة 27:

يحرم من الرضاع ما يحرم من النسب.

### المادة 28:

يعدّ الطفل الرضيع وحده دون إخوته وأخواته ولدا للمرضعة وزوجها وأخا لجميع أولادها، ويسري التحريم عليه وعلى فروعه.

## المادة 29 :

لا يحرم الرضاع إلا ما حصل قبل الفطام أو في الحولين سواء كان اللبن قليلا أو كثيرا.

## المادة 30: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

يحرم من النساء مؤقتا:

- المحصنة،

- المعتدة من طلاق أو وفاة،

- المطلقة ثلاثا.

كما يحرم مؤقتا:

- الجمع بين الأختين أو بين المرأة وعمتها أو خالتها، سواء كانت شقيقة أو لأب أو لأم أو من رضاع،

- زواج المسلمة من غير المسلم.

## المادة 31: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

يخضع زواج الجزائريين والجزائريات بالأجانب من الجنسين إلى أحكام تنظيمية.

## الفصل الثالث: النكاح الفاسد والباطل

## المادة 32: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

يبطل الزواج، إذا اشتمل على مانع أو شرط يتنافى ومقتضيات العقد.

## المادة 33: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

يبطل الزواج إذا اختل ركن الرضا.

إذا تم الزواج بدون شاهدين أو صداق أو ولي في حالة وجوبه، يفسخ قبل الدخول ولا صداق فيه، ويثبت بعد الدخول بصداق المثل.

#### المادة 34:

كل زواج بإحدى المحرمات يفسخ قبل الدخول وبعده، ويترتب عليه ثبوت النسب، ووجوب الاستبراء.

#### المادة 35:

إذا اقترن عقد الزواج بشرط ينافيه كان ذلك الشرط باطلا والعقد صحيحا.

### الفصل الرابع: حقوق وواجبات الزوجين

#### المادة 36: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

يجب على الزوجين:

- 1- المحافظة على الروابط الزوجية وواجبات الحياة المشتركة.
- 2- المعاشرة بالمعروف، وتبادل الاحترام والمودة والرحمة،
- 3- التعاون على مصلحة الأسرة ورعاية الأولاد وحسن تربيتهم.
- 4- التشاور في تسيير شؤون الأسرة وتباعد الولادات،
- 5- حسن معاملة كل منهما لأبوي الآخر وأقاربه واحترامهم وزيارتهم،
- 6- المحافظة على روابط القرابة والتعامل مع الوالدين والأقربين بالحسنى والمعروف،
- 7- زيارة كل منهما لأبويه وأقاربه واستضافتهم بالمعروف.

#### المادة 37: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

لكل واحد من الزوجين ذمة مالية مستقلة عن ذمة الآخر.

غير أنه يجوز للزوجين أن يتفقا في عقد الزواج أو في عقد رسمي لاحق، حول الأموال المشتركة بينهما، التي يكتسبانهما خلال الحياة الزوجية وتحديد النسب التي تؤول إلى كل واحد منهما.

المادة 38: ملغاة (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

المادة 39: ملغاة (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

#### الفصل الخامس: النسب

المادة 40: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

يثبت النسب بالزواج الصحيح أو بالإقرار أو بالبينة أو بنكاح الشبهة أو بكل زواج تم فسخه بعد الدخول طبقاً للمواد (32 و 33 و 34) من هذا القانون. يجوز للقاضي اللجوء إلى الطرق العلمية لإثبات النسب.

المادة 41:

ينسب الولد لأبيه متى كان الزواج شرعياً وأمكن الاتصال ولم ينفه بالطرق المشروعة.

المادة 42:

أقل مدة الحمل ستة (06) أشهر وأقصاها عشر (10) أشهر.

المادة 43:

ينسب الولد لأبيه إذا وضع الحمل خلال عشر (10) أشهر من تاريخ الانفصال أو الوفاة.

المادة 44:

يثبت النسب بالإقرار بالبنوة أو الأبوة أو الأمومة لمجهول النسب ولو في مرض الموت متى صدقه العقل أو العادة.

المادة 45:

الإقرار بالنسب في غير البنوة والأبوة والأمومة لا يسري على غير المقر إلا بتصديقه.

المادة 45 مكرّر: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

يجوز للزوجين اللجوء إلى التلقيح الاصطناعي.

يخضع التلقيح الاصطناعي للشروط الآتية:

- أن يكون الزواج شرعياً،
  - أن يكون التلقيح برضا الزوجين وأثناء حياتهما،
  - أن يتم بمنى الزوج وببيضه رحم الزوجة دون غيرها.
- لا يجوز اللجوء إلى التلقيح الاصطناعي باستعمال الأم البديلة.

#### المادة 46:

يمنع التبني شرعاً وقانوناً.

#### الباب الثاني: انحلال الزواج

#### المادة 47:

تنتحل الرابطة الزوجية بالطلاق أو الوفاة

#### الفصل الأول: الطلاق

#### المادة 48: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

مع مراعاة أحكام المادة (49) أدناه يحل عقد الزواج بالطلاق الذي يتم بإرادة الزوج أو بتراضي الزوجين أو بطلب من الزوجة في حدود ما ورد في المادتين 53 و54 من هذا القانون.

#### المادة 49: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

لا يثبت الطلاق إلا بحكم بعد محاولات صلح يجريها القاضي دون أن تتجاوز مدته ثلاثة (3) أشهر ابتداء من تاريخ رفع الدعوى.  
يتعين على القاضي تحرير محضر يبين مساعي ونتائج محاولات الصلح، يوقعه مع كاتب الضبط والطرفين.

تسجل أحكام الطلاق وجوباً في الحالة المدنية بسعي من النيابة العامة.

#### المادة 50:

من راجع زوجته أثناء محاولة الصلح لا يحتاج إلى عقد جديد، ومن راجعها بعد صدور الحكم بالطلاق يحتاج على عقد جديد.

#### المادة 51:

لا يمكن أن يراجع الرجل من طلقها ثلاث مرات متتالية إلا بعد أن تتزوج غيره وتطلق منه أو يموت عنها بعد البناء.

#### المادة 52: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

إذا تبين للقاضي تعسف الزوج في الطلاق حكم للمطالبة بالتعويض عن الضرر اللاحق بها..

#### المادة 53: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

يجوز للزوجة أن تطلب التطليق للأسباب الآتية:

- 1- عدم الإنفاق بعد صدور الحكم بوجوبه ما لم تكن عالمة بإعساره وقت الزواج، مع مراعاة المواد (78 و 79 و 80) من هذا القانون،
- 2- العيوب التي تحول دون تحقيق الهدف من الزواج،
- 3- الهجر في المضجع فوق أربعة أشهر،
- 4- الحكم على الزوج عن جريمة فيها مساس بشرف الأسرة وتستهيل معها مواصلة العشرة والحياة الزوجية،
- 5- الغيبة بعد مرور سنة بدون عذر ولا نفقة،
- 6- مخالفة الأحكام الواردة في المادة (8) أعلاه،
- 7- ارتكاب فاحشة مبينة،

- 8- الشقاق المستمر بين الزوجين،  
9- مخالفة الشروط المتفق عليها في عقد الزواج،  
10- كل ضرر معتبر شرعا.

**المادة 53 مكرّر: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)**  
يجوز للقاضي في حالة الحكم بالتطليق أن يحكم للمطلة بالتعويض عن الضرر اللاحق بها.

**المادة 54: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)**  
يجوز للزوجة دون موافقة الزوج أن تُخَالع نفسها بمقابل مالي.  
إذا لم يتفق الزوجان على المقابل المالي للخُلع، يحكم القاضي بما لا يتجاوز قيمة صداق المثل وقت صدور الحكم.

**المادة 55:**  
عند نشوز أحد الزوجين يحكم القاضي بالطلاق وبالتعويض للطرف المتضرر.

**المادة 56:**  
إذا اشتد الخصام بين الزوجين ولم يثبت الضرر وجب تعيين حكّمين للتوفيق بينهما.  
يعين القاضي الحكّمين، حكما من أهل الزوج وحكما من أهل الزوجة، وعلى هذين الحكّمين أن يقدموا تقريرا عن مهمتهما في أجل شهرين .

**المادة 57: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)**  
تكون الأحكام الصادرة في دعاوى الطلاق والتطليق والخلع غير قابلة للاستئناف فيما عدا جوانبها المادية.  
تكون الأحكام المتعلقة بالحضانة قابلة للاستئناف.

**المادة 57 مكرّر: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)**  
يجوز للقاضي الفصل على وجه الاستعجال بموجب أمر على عريضة في جميع التدابير المؤقتة ولاسيما ما تعلق منها بالنفقة والحضانة والزيارة والمسك

## **الفصل الثاني: آثار الطلاق**

### **العدّة**

#### **المادة 58:**

تعدّ المطلقة المدخول بها غير الحامل بثلاثة قروء،  
واليائس من المحيض بثلاثة أشهر من تاريخ التصريح بالطلاق.

#### **المادة 59:**

تعدّ المتوفى عنها زوجها بمضي أربعة أشهر وعشرة أيام، وكذا زوجة المفقود من تاريخ صدور الحكم بفقده.

#### **المادة 60:**

عدّة الحامل وضع حملها، وأقصى مدة الحمل عشرة (10) أشهر من تاريخ الطلاق أو الوفاة.

#### **المادة 61:**

لا تخرج الزوجة المطلقة ولا المتوفى عنها زوجها من السكن العائلي مادامت في عدة طلاقها أو وفاة زوجها إلا في حالة الفاحشة المبيّنة ولها الحق في النفقة في عدة الطلاق.

## الحضانة

### المادة 62:

الحضانة هي رعاية الولد وتعليمه والقيام بتربيته على دين أبيه والسهر على حمايته وحفظه صحة وخلقا. ويشترط في الحاضن أن يكون أهلا للقيام بذلك.

### المادة 63: ملغاة (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

### المادة 64: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

الأم أولى بحضانة ولدها، ثم الأب، ثم الجدة لأم، ثم الجدة لأب، ثم الخالة، ثم العمّة، ثم الأقربون درجة مع مراعاة مصلحة المحضون في كل ذلك، وعلى القاضي عندما يحكم بإسناد الحضانة أن يحكم بجق الزيارة.

### المادة 65:

تتقضي مدة حضانة الذكر ببلوغه (10) سنوات، والأنثى ببلوغها سن الزواج، وللقاضي أن يمدد الحضانة بالنسبة للذكر إلى (16) سنة إذا كانت الحاضنة أما لم تتزوج ثانية، على أن يراعى في الحكم بانتهائها مصلحة المحضون.

### المادة 66:

يسقط حق الحاضنة بالتزوج بغير قريب محرم، وبالتنازل ما لم يضر بمصلحة المحضون.

### المادة 67: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

تسقط الحضانة باختلال أحد الشروط المنصوص عليها في المادة 62 أعلاه.

ولا يمكن لعمل المرأة أن يشكل سببا من أسباب سقوط الحق عنها في ممارسة الحضانة. غير أنه يجب في جميع الحالات مراعاة مصلحة المحضون.

#### **المادة 68:**

إذا لم يطلب من له الحق في الحضانة مدة تزيد عن سنة بدون عذر سقط حقه فيها.

#### **المادة 69:**

إذا أراد الشخص الموكل له حق الحضانة أن يستوطن في بلد أجنبي رجع الأمر للقاضي في إثبات الحضانة له أو إسقاطها عنه، مع مراعاة مصلحة المحضون.

#### **المادة 70:**

تسقط حضانة الجدة أو الخالة إذا سكنت بمحضونها مع أم المحضون المتزوجة بغير قريب محرم.

#### **المادة 71:**

يعود الحق في الحضانة إذا زال سبب سقوطه غير الاختياري.

#### **المادة 72: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)**

في حالة الطلاق، يجب على الأب أن يوفر لممارسة الحضانة سكنا ملائما للحاضنة، وإن تعذر ذلك فعليه دفع بدل الإيجار.

وتبقى الحاضنة في بيت الزوجية حتى تنفيذ الأب للحكم القضائي المتعلق بالسكن.

### **النزاع في متاع البيت**

#### **المادة 73: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)**

إذا وقع النزاع بين الزوجين أو ورثتهما في متاع البيت وليس لأحدهما بينة فالقول للزوجة أو ورثتها مع اليمين في المعتاد للنساء

والقول للزوج أو ورثته مع اليمين في المعتاد للرجال.  
والمشتركات بينهما يقتسمانها مع اليمين.

### الفصل الثالث: النفقة

#### المادة 74:

تجب نفقة الزوجة على زوجها بالدخول بها أو دعوتها إليه ببينة مع مراعاة أحكام المواد 78 و79 و80 من هذا القانون.

#### المادة 75:

تجب نفقة الولد على الأب ما لم يكن له مال، فبالنسبة للذكور إلى سن الرشد والإناث إلى الدخول، وتستمر في حالة ما إذا كان الولد عاجزا لآفة عقلية أو بدنية أو مزاولا للدراسة، وتسقط بالاستغناء عنها بالكسب.

#### المادة 76:

في حالة عجز الأب تجب نفقة الأولاد على الأم إذا كانت قادرة على ذلك.

#### المادة 77:

تجب نفقة الأصول على الفروع والفروع على الأصول حسب القدرة والاحتياج ودرجة القرابة في الإرث.

#### المادة 78:

تشمل النفقة: الغذاء والكسوة والعلاج، والسكن أو أجرته، وما يعتبر من الضروريات في العرف والعادة.

#### المادة 79:

يراعي القاضي في تقدير النفقة حال الطرفين وظروف المعاش ولا يراجع تقديره قبل مضي سنة من الحكم.

#### المادة 80:

تستحق النفقة من تاريخ رفع الدعوى وللقاضي أن يحكم باستحقاقها بناء على بينة لمدة لا تتجاوز سنة قبل رفع الدعوى.

### الكتاب الثاني: النيابة الشرعية

#### الفصل الأول: أحكام عامّة

#### المادة 81:

من كان فاقد الأهلية أو ناقصها لصغر السن، أو جنون، أو عته، أو سفه، ينوب عنه قانونا ولي، أو وصي أو مقدم طبقا لأحكام هذا القانون.

#### المادة 82:

من لم يبلغ سن التمييز لصغر سنه طبقا للمادة (42) من القانون المدني تعتبر جميع تصرفاته باطلة.

#### المادة 83:

من بلغ سن التمييز ولم يبلغ سن الرشد طبقا للمادة (43) من القانون المدني تكون تصرفاته نافذة إذا كانت نافعة له، وباطلة إذا كانت ضارة به، وتتوقف على إجازة الولي أو الوصي. فيما إذا كانت مترددة بين النفع والضرر، وفي حالة النزاع يرفع الأمر للقضاء.

#### المادة 84:

للقاضي أن يأذن لمن يبلغ سن التمييز في التصرف جزئيا أو كليا في أمواله، بناء على طلب من له مصلحة، وله الرجوع في الإذن إذا ثبت لديه ما يبزر ذلك.

#### المادة 85:

تعتبر تصرفات المجنون، والمعتوه، والسفيه غير نافذة إذا صدرت في حالة الجنون، أو العته، أو السفه.

#### المادة 86:

من بلغ سن الرشد ولم يحجر عليه يعتبر كامل الأهلية وفقا لأحكام المادة (40) من القانون المدني.

### الفصل الثاني: الولاية

#### المادة 87: (أمر رقم 05-02 المؤرخ في 27 فبراير 2005)

يكون الأب وليا على أولاده القصر، وبعد وفاته تحل الأم محله قانونا. وفي حالة غياب الأب أو حصول مانع له، تحل الأم محله في القيام بالأمور المستعجلة المتعلقة بالأولاد. وفي حالة الطلاق، يمنح القاضي الولاية لمن أسندت له حضانة الأولاد.

#### المادة 88:

على الولي أن يتصرف في أموال القاصر تصرف الرجل الحريص، ويكون مسؤولا طبقا لمقتضيات القانون العام.

وعليه أن يستأذن القاضي في التصرفات التالية:

- 1- بيع العقار، وقسمته، ورهنه، وإجراء المصالحة،
- 2- بيع المنقولات ذات الأهمية الخاصة،
- 3- استثمار أموال القاصر بالإقراض، أو الاقتراض أو المساهمة في شركة،

4- إيجار عقار القاصر لمدة تزيد على ثلاث سنوات أو تمتد لأكثر من سنة بعد بلوغه سن الرشد.

#### المادة 89:

على القاضي أن يراعي في الإذن:  
حالة الضرورة والمصلحة، وأن يتم بيع العقار بالمزاد العلني.

#### المادة 90:

إذا تعارضت مصالح الولي ومصالح القاصر يعين القاضي متصرفا خاصا تلقائيا أو بناء على طلب من له مصلحة.

#### المادة 91:

تنتهي وظيفة الولي:

- 1- بعجزه.
- 2- بموته،
- 3- بالحجر عليه،
- 4- بإسقاط الولاية عنه.

### الفصل الثالث: الوصاية

#### المادة 92:

يجوز للأب أو الجد تعيين وصي للولد القاصر إذا لم تكن له أم تتولى أمره أو تثبت عدم أهليتها لذلك بالطرق القانونية وإذا تعدد الأوصياء: للقاضي اختيار الأصلح منهم مع مراعاة أحكام المادة 86 من هذا القانون.

#### المادة 93:

يشترط في الوصي أن يكون مسلما عاقلا بالغاً قادراً أميناً حسن التصرف وللقاضي عزله إذا لم تتوفر فيه الشروط المذكورة.

## المادة 94:

يجب عرض الوصاية على القاضي بمجرد وفاة الأب لتثبيتها أو رفضها.

## المادة 95:

للوصي نفس سلطة الولي في التصرف وفقا لأحكام المواد (88 و 89 و 90) من هذا القانون.

## المادة 96:

تنتهي مهمة الوصي:

- 1- بموت القاصر، أو زوال أهلية الوصي أو موته،
- 2- ببلوغ القاصر سن الرشد ما لم يصدر حكم من القضاء بالحجر عليه،
- 3- بانتهاء المهام التي أقيم الوصي من أجلها،
- 4- بقبول عذره في التخلي عن مهمته،
- 5- بعزله بناء على طلب من له مصلحة إذا ثبت من تصرفات الوصي ما يهدد مصلحة القاصر.

## المادة 97:

على الوصي الذي انتهت مهمته أن يسلم الأموال التي في عهده ويقدم عنها حسابا بالمستندات إلى من يخلفه أو إلى القاصر الذي رشده أو إلى ورثته في مدة لا تتجاوز شهرين من تاريخ انتهاء مهمته.

وأن يقدم صورة عن الحساب المذكور إلى القضاء.

وفي حالة وفاة الوصي أو فقده فعلى ورثته تسليم أموال القاصر بواسطة القضاء إلى المعني بالأمر.

#### **المادة 98:**

يكون الوصيّ مسؤولاً عما يلحق أموال القاصر من ضرر بسبب تقصيره.

#### **الفصل الرابع: التقديم**

#### **المادة 99:**

المقدم هو من تعينه المحكمة في حالة عدم وجود ولي أو وصي على من كان فاقد الأهلية أو ناقصها بناء على طلب أحد أقاربه، أو ممن له مصلحة أو من النيابة العامة.

#### **المادة 100:**

يقوم المقدم مقام الوصي ويخضع لنفس الأحكام.

#### **الفصل الخامس: الحجر**

#### **المادة 101:**

من بلغ سن الرشد وهو مجنون، أو معتوه، أو سفيه، أو طرأت عليه إحدى الحالات المذكورة بعد رشده يحجر عليه.

#### **المادة 102:**

يكون الحجر بناء على طلب أحد الأقارب أو ممن له مصلحة، أو من النيابة العامة.

#### **المادة 103:**

يجب أن يكون الحجر بحكم وللقاضي أن يستعين بأهل الخبرة في إثبات أسباب الحجر.

#### **المادة 104:**

إذا لم يكن للمحجور عليه ولي أو وصي وجب على القاضي أن يعين في نفس الحكم

مقدما لرعاية المحجور عليه والقيام بشؤونه مع مراعاة أحكام المادة (100) من هذا القانون.

#### **المادة 105:**

يجب أن يُمكن الشخص الذي يراد التحجير عليه من الدفاع عن حقوقه وللمحكمة أن تعين له مساعدا إذا رأت في ذلك مصلحة.

#### **المادة 106:**

الحكم بالحجر قابل لكل طرق الطعن ويجب نشره للإعلام.

#### **المادة 107:**

تعتبر تصرفات المحجور عليه بعد الحكم باطلّة، وقبل الحكم إذا كانت أسباب الحجر ظاهرة وفاشية وقت صدورهما.

#### **المادة 108:**

يمكن رفع الحجر إذا زالت أسبابه بناء على طلب المحجور عليه.

### **الفصل السادس: المفقود والغائب**

#### **المادة 109:**

المفقود هو الشخص الغائب الذي لا يعرف مكانه ولا يعرف حياته أو موته ولا يعتبر إلا بحكم.

#### **المادة 110:**

الغائب الذي منعه ظروف قاهرة من الرجوع إلى محل إقامته أو إدارة شؤونه بنفسه أو مفقودا بواسطة مدة سنة وتسبب غيابه في ضرر الغير يعتبر كالمفقود.

**المادة 111:** على القاضي عندما يحكم بالفقد أن يحصر أموال المفقود وأن يعين في حكمه مقدما من الأقارب أو غيرهم لتسيير أموال المفقود ويتسلم ما استحقه من ميراث أو تبرع مع مراعاة أحكام المادة 99 من هذا القانون.

#### **المادة 112:**

لزوجة المفقود أو الغائب أن تطلب الطلاق بناء على الفقرة الخامسة من المادة 53 من هذا القانون.

#### **المادة 113:**

يجوز الحكم بموت المفقود في الحروب والحالات الاستثنائية بمضي أربع سنوات بعد التحري، وفي الحالات التي تغلب فيها السلامة يفوض الأمر إلى القاضي في تقدير المدة المناسبة بعد مضي أربع سنوات.

#### **المادة 114:**

يصدر الحكم بفقدان أو موت المفقود بناء على طلب أحد الورثة أو من له مصلحة، أو النيابة العامة.

#### **المادة 115:**

لا يورث المفقود ولا تقسم أمواله إلا بعد صدور الحكم بموته، وفي حالة رجوعه أو ظهوره حيا يسترجع ما بقي عينا من أمواله أو قيمة ما بيع منها.

### **الفصل السابع: الكفالة**

#### **المادة 116:**

الكفالة التزام على وجه التبرع بالقيام بولد قاصر من نفقة وتربية ورعاية قيام الأب بابنه وتتم بعقد شرعي.

### **المادة 117:**

يجب أن تكون الكفالة أمام المحكمة، أو أمام الموثق وأن تتم برضا من له أبوان.

### **المادة 118:**

يشترط أن يكون الكافل مسلما عاقلا أهلا للقيام بشؤون المكفول وقادرا على رعايته.

### **المادة 119:**

الولد المكفول إما أن يكون مجهول النسب أو معلوم النسب.

### **المادة 120:**

يجب أن يحتفظ الولد المكفول بنسبه الأصلي إن كان معلوم النسب، وإن كان مجهول النسب تطبق عليه المادة 64 من قانون الحالة المدنية.

### **المادة 121:**

تُخول الكفالة الكافل الولاية القانونية وجميع المنح العائلية والدراسية التي يتمتع بها الولد الأصلي.

### **المادة 122:**

يدير الكافل أموال الولد المكفول المكتسبة من الإرث، والوصية، أو الهبة لصالح الولد المكفول.

### **المادة 123:**

يجوز للكافل أن يوصي أو يتبرع للمكفول بماله في حدود الثلث، وإن أوصى أو تبرع بأكثر من ذلك بطل ما زاد على الثلث إلا إذا أجازته الورثة.

### **المادة 124:**

إذا طلب الأبوان أو أحدهما عودة الولد المكفول إلى ولايتهما يخير الولد في الالتحاق بهما إذا بلغ سن التمييز

وإن لم يكن مميزا لا يسلم إلا بإذن من القاضي مع مراعاة مصلحة المكفول.

### **المادة 125:**

التخلي عن الكفالة يتم أمام الجهة التي أقرت الكفالة، وأن يكون بعلم النيابة العامة، وفي حالة الوفاة تنتقل الكفالة إلى الورثة إن التزموا بذلك وإلا فعلى القاضي أن يسند أمر القاصر إلى الجهة المختصة بالرعاية.

**CHAPTER 03**

**LEGAL LANGUAGE**

**AND**

**LEGAL TRANSLATION**

The corpus of our paper “the Family Code of Algeria” is included in the legal field since it is one of the Codes that regulate the Algerian society. It was drafted using a special language to conform with the field of law “the legal language”. The particularity of the legal language and the legal system makes the translation of such document special as well. The followings are the most important features of the legal language as well as the legal translation.

## **1. Legal language**

### **1.1 Definition of legal language**

The legal language is the language concerned with the field of Law. It is the language used to pronounce judgments in courts, impose obligations and confer rights, grant permission, express prohibition ...etc. It is different from ordinary language with respect to vocabulary and style. Legal language is characterized by certain specific features. Unlike language in general use in its most obvious function, it does not merely convey knowledge and information but it directs, affects and modifies people’s behavior (e. g. through statutes, court decisions, contracts). Thus, it is considered to be:

1. **Normative language:** since it is the language of rights and obligations, the language of power, of law that regulates the orderly living together of people within their society.
2. **Performative Language:** it is not limited to just says and information. It is not used to express something but to give results and effects. In other words, by using this language, we achieve effects and generate consequences in the surrounding world.
3. **Technical language:** It is related to a specific technical sphere that of law. It has its own terminology and style.

Every legal language has a specific vocabulary, which is marked by its complexity and particularity, as it is bound to a specific legal system. In contrast to other sciences and disciplines there is no universal legal language, describing and expressing universal concepts, such as e. g. in mathematics or medicine. Legal language reflects the history, evolution and culture of the corresponding legal system. Each society has its own legal concepts, legal norms and ways of applying its laws.

## **1.2 Types of legal texts**

A legal text is a non-literary text since it is concerned with information, facts and reality. It is based on precision and reason and it is expected to fulfill a certain pragmatic function.

Within the legal field, there are many separate areas of law that differ in lexical as well terminological aspects which opens the ground for the existence of many forms of legal writing. The following are the main types of these forms:

1. Official documents: certificates of birth, death, marriage, divorce, identity cards, family record books, etc.
2. Documentation for education or profession: academic transcripts, job certificates, degrees certificates, etc.
3. Property documents.
4. Wills.
5. Contracts: sale or purchase contracts,
6. Witness statements.
7. Trusts.
8. Ligation documents.
9. Courts translation.
10. Conventions.

11. Immigration documents: passports, entry clearance certificate etc.

12. Decrees and codes: the Civil Code, the Family Code, the Commercial Code, etc.

### **1.3 Legal English**

Legal English is the English related to the legal field. It differs from the ordinary one.

#### **1.3.1 Bases of the legal English language**

The history of the legal English language starts with the earliest days of the Celtic England. However, since the British Celts had a little lasting impact on the legal system, the language was not much influenced in this period. Meanwhile, with the coming of the Germanic invaders who spoke Anglo-Saxon, a new type of legal English was developed and new terms appeared and have survived until today such as: “bequeath”, “theft”, “guilt”, “land”, etc. the spread of Christianity in 597 AD had also an important impact on English language regarding the fact that it promoted writing in Latin language and paved the way to the roman catholic church to regulate religious and legal matters particularly marriage and family. As a result, Latin introduced terms like: “clients”, “admit” and “mediate”.

After the Duke of Normandy claimed the English throne and invaded England in 1066, English was replaced with Latin. But in the beginning of 1310, the language of statutes and oral pleadings in royal courts was French. For the next one or two centuries, French maintained its status as England's premier legal language. Several French terms are still common in legal English such as "accounts payable/receivable," "attorney general," "court martial." The most lasting impact of French is the tremendous amount of technical vocabulary that derives from it, including many basic words in the English legal system, such as "agreement," "arrest," "estate," "fee simple," "bailiff," "council," "plaintiff," and "plea."

However, in 1417, while fighting the French, King Henry V broke all linguistic ties with his Norman ancestry and decided to have many of his official documents written in English.

In 1731, Parliament permanently ended the use of Latin and French in legal proceedings; however, it became difficult to translate many French and Latin terms into English so they remained intact.

As a conclusion, it is clear that Latin and French still have a great impact on legal English. This explains the reason why it is called to be a vague, archaic and obtuse language.

### **1.3.2 Features of legal English**

Legal lexicon differs to a great extent from the ordinary one. It is worth to mention that such lexicon renders legal language harder to understand without a considerable familiarity with the legal sphere. Here are the main features of legal English language:

#### **1.3.2.1 Terms of Latin and French origin**

One of many noticeable features of English legal lexicon is the existence of Latinisms (Latin terms) in its terminology. The main reason is the influence of Latin supported by the power of the Roman church over Europe during many centuries ago and also its widespread use as a language of learning and literature in addition to the incredible power of the Roman law which was a coherent written system, and had strength of an institution over a considerable area of Europe. The following are some Latin terms and phrases:

- Bona fide: good faith or in good faith.
- Mors civilis: civil death.
- Res judicata: an issue adjudicated.

It is the same thing for the existence of legal French terms that was mainly because of the Norman Conquest in 1066. The language of the invaders gained an undeniable position in the legal sphere of England, bringing with it a wealth of legal French terminology. As a

case of illustration, the following terms are originally French: “Contract, proposal, schedule, terms, conditions, policy, alias, etc”.

### **1.3.2.2 Archaic diction of legal English**

Legal English lexicon is considerably made of archaic legal terms. They are particularly used to give a flavor of formality to the language they belong to and because they are less prone to semantic change. For example, in legal sphere, it is common to use ‘imbibe’ as an alternative of ‘drink’, ‘inquire’ rather than ‘ask’ or ‘forthwith’ as a substitution of ‘right away’.

There exist also some archaic adverbs, they are actually a mixture of deictic elements: ‘here’ ‘there’ and ‘where’ with certain prepositions: of, after, by, under etc. They are used in legal English primarily to avoid repeating names or phrases:

- Hereby: as a result of this.
- Whereby: because of which.
- Hereinafter: in what follows.

### **1.3.2.3 Archaic use of the modal “shall” in legal English**

Traditionally, the modal “shall”, in legal texts, carries an obligation or a duty as opposed to its common function: expressing futurity. Due to its performative nature as all legal languages are, legal English uses structures which enable the performing of specific speech acts. The modal “shall” serves by a great deal in the task of performance.

### **1.3.2.4 Lexical repetition or redundancy**

Legal language is highly concerned with the exactness of reference; hence its tendency toward lexical repetition, and therefore to functional redundancy. In legal writing, draftsmen avoid the use of anaphoric devices or referential pronouns such as: the personal pronouns (he, she, it etc) or the demonstrative ones (this, that, etc), in addition to the verb ‘to do’ that may substitute a whole clause.

### **1.3.2.5 Use of such as a determiner and said as nominal premodifier**

Another feature of legal English is the unusual use of the words ‘**the same**’, ‘**such**’ and ‘**said**’. For instance, the word ‘**the same**’ usually implies comparison to a similar object or person, but in legal use it refers to sameness of reference. The word “**such**” that means normally “**that sort**” but in legal writing, it acts in the same way as the demonstrative pronoun or a determiner “**this**”. As for the word “**said**”, it is used as an article (e.g the) or a demonstrative pronoun/ nominal premodifier (e.g this). They do not replace the noun – which is the whole purpose of pro-forms – but are used as adjectives to modify the noun.

### **1.3.2.6 Frequent use of doublets and triples**

Actually, there is a common use of such collocations in which synonyms or near synonyms are combined in pair “doublets” or in “triples” to convey what is usually a single legal concept. Such words can be either nouns, verbs, adjectives or even prepositions, for example:

- Null and void.
- Terms and conditions.
- Promise, agree and covenant.

This is merely a tradition adopted when drafting legal documents and it is not a distinction from simple styles of expressions.

### **1.3.2.7 Unusual word order**

At times, the word order used in legal documents appears distinctly strange. There is no single clear reason for this, although the influence of French grammatical structures is certainly a contributory factor.

### **1.3.2.8 Use of suffixes/ name endings er, -or, and -ee**

Legal English contains some words and titles, such as employer and employee; lessor and lessee; bailor and bailee, etc.

### **1.3.2.9 Legal English as a technical language**

Another noticeable feature of legal English is its technical terminology. A technical term is a word used exclusively in the legal sphere, which means that it is monosemic (purely technical term) like the words barrister, lawyer or mortgage, or used in the field of law in a way that differs from its everyday use (semi-technical term).

### **1.3.2.10 long, complex and equivocal sentences and passive constructions**

Legal writing is marked by the use of long sentences with multiple subordinations and parenthesis as well as the use of the passive voice that makes the legal language neutral. It is also characterized by its formal and impersonal style.

## **1.4 Legal Arabic**

Legal Arabic is the Arabic used in legal settings.

### **1.4.1 Bases of legal Arabic**

The Islamic law derived from the Holy Quran (the holy book of Muslims) and the traditions of the Holy Prophet Mohammed (Peace Be upon Him) is the main source of the most of the Arab and Islamic countries laws since the Islamic state “khilafa” until today. Holy Prophet Mohammad's (peace be upon him) words are general principles of justice and equity, with a high degree of objectivity and essentially primary regulations necessitated by the social nature and structure of the Arab community of that time. It must be mentioned that not only the Holy Quran, but also the other sources of Muslim jurisprudence were essentially created to meet the needs of the community existing during and after Holy Prophet Mohammad's (peace be upon him) era. After the decline of the Islamic state, most Arab and Islamic countries were ruled by the French and British law in

addition to the Islamic Law. Therefore, the language of law in Arab countries is influenced by these main sources.

## **1.4.2 Features of legal Arabic**

### **1.4.2.1 Long sentences**

Legal Arabic, like all legal languages, prefers long sentences in order to place all information on a particular topic in one complete unit to reduce the ambiguity that may arise if the conditions of a provision are placed in separate sentences. The words and phrases within a sentence are joined together with the conjunctions “و” meaning “and” and “أو” meaning “or” that are used very frequently in legal writing than in any other prose style.

### **1.4.2.2 Archaic vocabulary and the grammar of the Holy Quran**

The use of an archaic vocabulary traced back to the Islamic culture and old classic Arabic terms as well as the borrowing of terms and grammatical structures of the Holy Quran and the sayings of the Prophet Mohammad's (peace be upon him) are the main feature of the Arabic of law.

### **1.4.2.3 The frequent use of “على” and “يجب أن، يجب على”**

The performative nature of legal language is obviously seen in Arabic legal documents where the legal obligation is expressed by the frequent use of the present simple with “على” and “يجب أن، يجب على”.

### **1.4.2.4 Purely technical Arabic vocabulary**

One of the features of legal Arabic which makes it difficult to translate is the purely technical terms which are associated to the Arab culture and the Islamic law “sharia”. In fact, terms like *كفالة، خلع، عدة* are very difficult to be rendered in other languages since their equivalence does not exist in other cultures than the Islamic Arabic ones.

## **2. Legal translation**

Translation is often defined as an activity comprising the interpretation of the meaning of a text in one language – the source- and the other language the – target-. It is an operation performed on languages: a process of substituting a text in one language for a text in another (Catford, 1965: 01). During the past few decades, the translation activity has developed because of rising international trade, increased migration, globalization, the recognition of linguistic minorities, and the expansion of the mass media and technology. The plurality of the nowadays fields creates different kinds of translation activity. Each field has now its own process of translation that copes with its particularity e.g. the literary translation, scientific translation, technical translation, legal translation...etc.

## **2.1 What is legal translation?**

Legal translation is the translation based on or concerned with the law; the legal field. It involves all the legal texts that are used in various legal settings be it a court, a national or international organization, a law book, a legal report, a birth certificate, a contract, etc. Thus, it is related with non literary texts concerned with information, facts and reality and objects based on precision, reason and which are expected to fulfill a certain pragmatic function. This explains the importance of legal translation in today world. . Legal translation is therefore hailed as one of the most challenging fields of study, requiring the inventiveness of literary translation with the terminological precision of technical translation.

The translation of legal texts dated from ancient times. The best known texts translated in this field include the peace treaty between Egypt and the Hittite

Empire<sup>1</sup> in 1271 BC as well as the translation of the *Corpus Iuris Civilis*<sup>2</sup> into numerous languages after its initial translation into Greek. Today, legal translation plays a crucial role in all courts and tribunals around the world.

## 2.2 What is special about legal translation?

Legal translation is not merely transcoding between the source language (SL) and the target language (TL) but it is also a translation from one legal system into another- source legal system into the target legal system. It is the integration of legal systems. It requires great knowledge and experience in the legal field. The legal translator must be a good linguist, legal scholar and even a detective willing and able to inquire and to define legal concepts expressed in the source language of a document that may not even have an equivalent in the language or legal system of the target text.

## 2.3 The main difficulties of legal translation from Arabic into English

1. Legal translation is bound by each language's culture and system: the legal system in most Arab countries takes its main sources from the Islamic religion "the holy book and the traditions of the Prophet Mohammed PBUH" in particular in matters of personal status "marriage, divorce, inheritance,...etc". This constitutes a big difficulty while translating from Arabic into English because Arabic uses terms, collocations and concepts which English lacks the equivalent.
2. The legal technical vocabulary of each language: every language has its own luggage of legal terms. Therefore, legal translation has its own vocabulary and can be regarded as a discipline on its own. The translator finds himself obliged to understand each term in Arabic and then, find its equivalent in English.

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<sup>1</sup> The **Hittites** were an [ancient Anatolian](#) people who established an empire at [Hattusa](#) in north-central Anatolia around 1600 BC.

<sup>2</sup> The **Corpus Juris** (or **Iuris**) **Civilis** ("Body of Civil Law") is the modern name for a collection of fundamental works in [jurisprudence](#), issued from 529 to 534 by order of [Justinian I](#), [Eastern Roman Emperor](#).

3. Difference in the language style and legal formulas: Arabic and English are very different languages. Each one has its own style and uses archaic legal formulas.
4. Legal translation is bound by the fidelity to the source text for the sake of preserving the letter of law.

## 2.4 The three main keys of a good legal translator

Legal translators must be competent in at least three key areas:

- ✓ **Comparative Law:** This requires having a basic knowledge of the legal systems of both the source and target languages.
- ✓ **Specific Terminology:** This requires one to be familiar with the specific terminology of the particular legal field(s) dealt with in the source and the target text.
- ✓ **Legal writing style:** This requires one to be competent in the specific legal writing style of the target language.

Legal translation is difficult because of the difficulty of legal language. It needs enough knowledge of both source language and target language culture and legal system.

**CHAPTER 04**  
**THE DIFFICULTIES AND STRATEGIES**  
**OF TRANSLATING THE**  
**RELIGIOUS AND LEGAL TERMS**  
**OF FAMILY CODE**  
**INTO ENGLISH**

During the legal translation process from Arabic into English, some difficulties and problems are faced particularly while translating terms and expressions bound by each language's culture and system. This was the case with us when we were translating the Family Code of Algeria written in Arabic and that takes its bases from Islamic law: the Holy Quran and the Hadith ( Hadith is a report of the deeds and sayings of the prophet Mohammed PBUH) and French law. We were obliged to follow a translational strategy to solve each difficulty taking into account the purpose of our translation.

## **1. The difficulties faced while translating the Family Code**

We have classified the terms that constituted a problem in the translation into four categories according to the kind of the difficulty we faced while translating the Family Code:

### **1.1 Non-equivalence due to culture-specific concepts**

The source language word may express a concept which is totally unknown in the target culture. It may relate to religious belief, a social custom or even a type of food. Such concepts are often referred to as "culture-specific" (Baker, 1992, p 21). This case is known to Catford as "Cultural untranslatability" which is due to the absence in the TL culture of a relevant situational feature for the SL text (Bassnett, 2005, p 39).

In fact, while we were translating the Algerian Family Code, we found some terms that are culturally untranslatable because the English culture does not involve a relevant situational feature. In other terms, they have no equivalent in English because they are culture specific concepts. These terms are those related to the Islam such as:

الفَاتِحَة، الخُلْع، العِدَّة، مُعْتَدَة، الكَفَالَة، الصِّدَاق، صِدَاق المِثْل، وليّ الزَّوْجَة.

## **1.2 Culture-specific collocations, fixed expressions and terms quoted from the Holy Quran or the Hadith**

Because the Family Code of Algeria takes its main sources from the Holy Quran and the Hadith, there many terms, culture-specific collocations and fixed expressions quoted directly from these two holy sources. In other words, they were taken from these sources as they are without alteration. The collocation which is the tendency of certain words to co-occur regularly in a given language i.e. it consists in words that occur in company of other words (Baker, 1992, p 47), constitute another problem in translation mainly because the collocated words are culture-specific collocations. They reflect the cultural setting in which they occur. Like culture-specific word, they point to concepts which are not easily accessible to the target reader. (Baker, 1992, p 60)

فاحشة مبينة، اليانس من المحيض، قريب محرم، المحرمات بالرضاع، المحرمات بالمصاهرة، المحرمات بالقراية،  
ثلاثة قروء.

## **1.3 The purely technical vocabulary**

Legal translation is primarily characterized by its technical vocabulary. “*Some terms can not be understood without a considerable familiarity with the legal sphere in particular the purely technical terms. These terms are monosemic that is having one legal meaning*”. (Fakhri Mahdi, Nr 79, p 879). Translating a legal document such as the Family Code means finding many purely technical terms. For example:

النيابة العامة، ولي (القاصر أو المحجور عليه)، المقدم، الوصي، أمر على عريضة، الاستئناف، سقوط الحق،  
الموثق، ضابط الحالة المدنية، حكم قضائي، الفصل على وجه الاستعجال، سنّ التمييز، سن الرشد، القاصر،  
الطعن.

## **1.4 The semi-technical vocabulary**

Semi technical terms constitute also a difficulty in the translation process because *they one meaning or more than one in everyday language and another in the field of law (polysemic)* (Fakhri Mahdi, Nr 79, p 879). The first one is the **general meaning** and the second is the **legal meaning**. Therefore, we were obliged to devote a special attention while choosing the right meaning and thus the right translation for such words. For example, the term **maintenance** has a general meaning: Keeping something in a good condition (Oxford dictionary, 2003 p 455) and a legal meaning: the provision of food, clothing, and other basic necessities of life to persons on whom we are legally responsible for (Oxford Dictionary of Law, 2005 p 300) . The following are some of these terms:

المادة، الكتاب، العنوان، الحضانة، النفقة، النسب.

## 2. Strategies used in dealing with these difficulties

First of all, we deemed appropriate to deal briefly with the **Skopos theory**, one of the functionalist approaches, because of its importance and connection with the legal translation.

### 2.1 The Skopos theory

The Skopos theory *النظرية الغائية / نظرية الهدف* is a theory of translation developed by the German translator Hans, J, Vermeer in 1978. “Skopos” is the Greek word for “purpose”, as a technical term, it stands for the purpose of translation. By this theory, the translator takes into consideration the source text on one hand and the target text on the other hand but, he must focus more on the function “skopos” or the purpose of the translation. (JABIR, 2006, page 38) According to this theory, the basic principle which determines the process of translation is the purpose (skopos) of the translational action. In other words, it is the purpose of translation which determines the translation methods and strategies.

The different purposes of translation are reflected in the type of translation to be produced.

We conclude by this brief definition of the Skopos theory that before starting our translation, we must consider the source text as well as the target text and determine the aim of our translation to be able to determine our translation strategy. It is worth mentioning that the aim of our translation is to give an unofficial English translation of two books “the first related to marriage and divorce and the second related to legal representation” of the Algerian Family Code to highlight the common difficulties in translating religious and legal terms. What is expected of us is to reconstruct the form and substance of the target language and to make sure that the function of the target text is always the same as that of the source text.

We used a special and an appropriate strategy to solve each difficulty we encountered while translating the Algerian Family Code taking into consideration the aim behind our translation.

## **1.2 The strategies**

A translation strategy is a procedure for overcoming an attention unit encountered in translating a text or a segment of it. The following are the strategies we followed in translating the terms of the Family Code of Algeria into English:

### **1.2.1 Translation using a loan word or a loan word plus explanation**

We relied on loan words with the terms that are purely Arabo-islamic terms because they have no functional equivalent in English and even in all western languages. They have a strong and bound relation with the Islamic culture and the legal system of Islamic countries i.e Algeria. This strategy is well explained in Mona Baker book as follows:” *This strategy is particularly common in dealing with culture specific items, modern concepts and buzz words. Following the word loan with an explanation is very useful when the word in question is repeated several times in the text. Once explained, the loan word can be used on its own; the reader can understand it and is not extracted by further lengthy explanation*” (Baker, 1992, p34).

In fact, this strategy consists in borrowing from other languages; one of the source language oriented translation procedures set by Vinay and Darbenlet. “*In borrowing, there is an introduction into a language, or a dialect, of elements from another language. In other words, it is a transfer of a source language term into the TL without translating it. The SL term is either transcribed or transliterated in TL. Proper names and cultural terms are the most common by being translated using borrowing*”. (Aissi, 1987, p135).

Therefore, we adopted this strategy with the terms:

الفاتحة، الخلع، العدة، معتدة، الكفالة، الصداق، صداق المثل، ولي المرأة، الشريعة.

We transliterated these terms since they have no equivalent in English and we followed each term with an explanation. We put this explanation just when the term first appeared. Then, we used the borrowed term on its own.

1\_ **الفاحة** : The term **الفاحة** does not exist in English culture and belief. It is particularly related to the Islamic religion. It consists in reading a verse from the Quran and the expression of offer and acceptance of marriage. We put “fatiha” plus an explanation “the expression of offer of the bride’s wali and acceptance of the groom followed with the reading of the Surah Al-Fatiha” “a division of al-Quran”.

2\_ **ولي (المرأة)** : The word ‘wali’ is taken from the Arabic word **Al-Wilayah** (الولاية). The wali is someone who possesses or has been granted by Sharia the authority to perform a marriage contract. He is a man of the woman relatives “generally her father”. In the Western world, there is no such man to marry women, so there is no equivalent for this term. We put “wali” then the explanation “woman’s guardian”.

3\_ **الكفالة** : As for **الكفالة**, we put “kafala” and the explanation “adoption according to the Islamic Law” since this concept does not exist in all western countries. Because adoption is prohibited according to the Islamic Law, kafala is permitted and it consists in placing a child under the guardianship of a parent but the kafala child shall not receive the name of the kafala parents nor have a right of their inheritance. Parents who “adopt” a child in the kafala process become their legal guardians but they are not subject to the full range of rights and responsibilities as are biological parents (Stilt and Gandhavadi, 2011, p14)

**الكافل** : is the person who adopts a child in kafala process. We translated it as follows: kafala parent. As for **المكفول** who is the child being adopted in kafala process, we put “kafala child”.

4\_ **الخلع** : The term **الخلع** was also a hinder for us since the conception of a *wife’s ability to petition a judge for a divorce, which would be granted without the husband’s consent* (Stilt and Gandhavadi, 2011, p 09) is purely related to the Islamic law. This ability functions through paying a given sum to the husband. This process of divorce is allowed under the

Islamic countries Family Code. However, it has no equivalent in the western countries. We followed the same strategy for its translation, i.e. we loaned the word and gave it an explanation: “wife’s ability to petition a judge for a divorce”.

5\_ **العدة** : For the term **العدة**, we adopted the same strategy. We transliterated it “iddah” and put the following explanation “wife’s legal waiting period”. This term consists in the wife being obliged to expire a period of four months and ten days before marrying again or being able to left the matrimonial home. This period is prescribed under the Islamic Law and has no equivalent in the English Law.

**معتدة** : the term **معتدة (امرأة)** has no equivalent as well. We put: a woman in her iddah “legal waiting period”.

6\_ **الصداق**: This term means an amount of money or something of value “jewelry” that the husband shall give to his wife before the consummation of marriage. It is one of the pillars of a legal marriage in Islam. The word “dowry” which means: “*an amount of money or a property which a woman’s family gives to the man she marrying or a man’s family to the woman he is marrying*” (Oxford wordpower oxford university press) can be used as an equivalent but, since its meaning differs in the fact that a dowry can be paid by a wife to her husband which is forbidden in Islam, we used the word “mahr”<sup>3</sup> plus the word “dowry”: mahr “dowry”

**صداق المثل** : This kind of mahr “dowry” consists in paying a sum of money in case a marriage is consumed without the wali, the two witnesses or the mahr “dowry” or in case the value of the mahr “dowry” is not determined in the marriage contract. It has no equivalent in English. Thus, we transliterated it “sadaq el mithl” followed by this explanation: “the dowry of parity”.

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<sup>3</sup> The word « mahr » is the synonym for **الصداق** which is frequently used than « sadaq ».

7\_ الشريعة : It is the law derived from the Noble book of the Islamic religion “the Quran” and the traditions of the Prophet Mohamed “PBUH”. It is the main source of law of all the Islamic countries. Thus, it is a purely Arabic term that has no equivalence in English. We transliterated it as follows: Sharia followed by this definition: “Islamic law” since it is a law related to the Islamic religion.

### 1.2.2 Formal equivalence

Equivalence is the "*replacement of textual material in one language (SL) by equivalent material in another language(TL)*" (Catford, 1965: 20). Formal equivalence is to translate the SL term by its lexical equivalence in the TL. According to Nida, Formal equivalence ‘focuses attention on the message itself, in both form and content. In such a translation one is concerned with such correspondences as poetry to poetry, sentence to sentence, and concept to concept.’ Nida calls this type of translation a ‘gloss translation’, which aims to allow the reader to understand as much of the SL context as possible (Bassnett, 2005, p 34).

In other words, formal equivalence is to translate literally: the translator should attempt to reproduce "as literally as meaningfully the form and content of the original. (Aissi, 1987, p 29). Literal translation occurs when there is a one—to—one structural and conceptual correspondence. It is accepted when the meaning is rendered and the stylistic and syntactic feature of the target language are respected In literal translation, the words and phrases of the SL are translated taking no account of the context but respecting the syntactic structure of TL. (Ibid, p 140).

Some of the terms used in the Algerian Family Code can be translated by formal equivalence.

فاحشة مبينة، ، قريب محرم، المحرمات بالرضاع، المحرمات بالمصاهرة، المحرمات بالقرابة، ثلاثة قروء،

- ❖ **ثلاثة قروء** : The word **قروء** means a menstrual period, menses. In the article 58 of the Family Code, it is used in plural with **ثلاثة** three. We adopted a literal translation to get the following: three menses or menstrual periods. We relied on the translation of the meaning of the Quran into English since this collocation is quoted directly from it: Al-Baqara, verse N° 228: **والمطلقات يتربصن بأنفسهن ثلاثة قروء** : and divorced women shall wait (as regards their marriage) for **three menstrual periods**.
- ❖ **المحرمات** : We translated the word **المحرمات** (notice that the word is used in the feminine plural form, so, there is no need to put the word **النساء** before it which can be easily understood that it is talking about women not men) by women prohibited. we followed it by the translation of each term to get the following:
  - **المحرمات بالرضاع** : women prohibited by suckling.
  - **المحرمات بالقرابة** : women prohibited by consanguinity.
  - **المحرمات بالمصاهرة** : women prohibited by affinity.
- ❖ **فاحشة مبينة**: This expression is quoted from the noble Quran. It means an evident indecent act like adultery. The wife has the right to leave the matrimonial home or to petition for a divorce in case her husband is guilty of committing such act. We translated it by: an open indecency.
- ❖ **قريب محرم** : In the family Code of Algeria, this expression is used to refer to the person who is not relative to the child by kinship. We adopted the literal translation: unmarriageable kin.

### 1.2.3 Paraphrase

Paraphrase is the restatement of a word or sentence by amplification or free rendering. That is, a concept expressed in a word or a sentence is diluted in the TL and expressed by more than one word or sentence. (Aissi, 1987: 159). It is defined by Newmark as follows: "an extended synonym and inevitably an expansion and a diffusion of the original text. It is only justified when an item of terminology (technical, institutional, cultural, ecological, scientific) cannot be handled in any other way ». (Ibid: 160)

- ❖ **اليائس من المحيض** : She is the woman whose has attained the time of menopause. Since this expression is quoted from the holy Quran, we preferred to adopt its translation in English: **a woman who has passed the age of monthly courses.**
- ❖ The word **نحلة** was also quoted directly from the Quran “verse N° 04 of the Surat of An-Nisa”. In the dictionary, we found that its equivalent is “present, gift, donation” (Baalbaki, 2008). It was translated into English by “with a good heart” in the English translation of the meanings of the Quran (Al-Hilali and Muhsen Khan, 1984, 106). Therefore, we adopted the following translation for this term: a gift (given) with a good heart.

#### **2.2.4 Functional equivalence**

Functional equivalence or dynamic equivalence is to reproduce "in the receptor language the closest natural equivalence of the source-language message".

Dynamic equivalence and formal equivalence are terms for methods of translation coined by Eugene Nida. The two terms have often been understood as fundamentally the same as sense-for-sense translation (translating the meanings of phrases or whole sentences) and word-for-word translation (translating the meanings of individual words in their more or less exact syntactic sequence), respectively, and Nida himself often seemed to use them this way. Nida first used the term dynamic equivalence then, he proffered the term functional equivalence.

In the field of legal translation, functional equivalence occurs when the translator renders the legal term of the SI by a legal term in the TI which is functionally equivalent to it.

We adopted this strategy when formal equivalence does not fit with some terms. For instance, we can not translate ضابط الحالة المدنية by the “civil status officer” using the formal equivalence since this term does not exist in the target language legal system. However, there is an equivalent for this term in the English legal system which is “the registrar”. Thus, we searched for an equivalent for this kind of terms in English using the different translation tools.

- We used a dictionary Arabic/English (Al Mawrid, trilingual dictionary Arabic-English- French, Dr Rohi Baalbaki). This dictionary though is not specialized; it gives equivalents of terms in different fields including the legal terms.
- We checked the terms in specialized dictionaries or glossaries, namely: “Oxford dictionary of law”, “English Arabic legal Glossary” Samia Zumout, “Glossary of legal terminology English Arabic” Ayman Khatib and Khalil Ansara, and “Family law terms and definitions” association of NI.
- We consulted parallel texts i.e. texts of law which are similar to the source language text “the Algerian Family Code” written in the target language to highlight similarities and the structures best to follow. The English Family Law for Muslims proposed by Experts from Sudanese Organization for Research and Development “SORD” and the unofficial English translation of the 2004 Moroccan Family Code prepared by a team of English and Arabic speaking lawyers and a professional Arabic-English Moroccan translators at the Global Rights head Office in Washington and their field Office in Morocco were of great help to us.
- We also consulted a specialist in this field: a sworn translator who has more than 07 years experience in the field of translation through her professional experience. She

gets big familiarity with legal translation from and into English through many legal documents she translated at the request of the customers such as court judgments, contracts (of sale, purchase...), power of attorney, conventions and agreements ....etc.

The following are the terms and their functional equivalent:

- ❖ **القاصر/المحجور عليه) وليّ : Legal guardian** : A **legal guardian** is a person who has the legal authority to care for the personal and property interests of another person, called a ward. Most countries and states have laws that provide that the parents of a minor child are the legal guardians of that child.
- ❖ **الوصيّ**: The word "وصيّ" is derived from the word "وصية" « **testament** ». It means that this guardian is appointed upon a testament by the father or the grandfather to look after a child under the age of 18 when the child has no mother. So, it is translated by a **testamentary guardian**: a person appointed by will to be the guardian of a child under 18.
- ❖ **المقدم** : The word "مقدم" is derived from the word "تقديم". It means that the court is empowered to appoint this guardian in case there is neither a legal guardian nor a testamentary guardian. It is translated by: The **guardian ad litem**<sup>4</sup>.
- ❖ **الاستئناف** : It is also called الطعن. Both terms are translated by “**an appeal**”: when someone that loses at least part of a case asks a higher court called an “appellate Court” to review the decision and say if it is right. This is called “**to appeal**” or “**to take an appeal.**”

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**AD LITEM:** Comes from Latin, meaning for the “purposes of the lawsuit.” For example, a *guardian ad litem* is a person appointed by the court to protect the interests of a minor or legally incompetent person in a lawsuit.

- ❖ سقوط الحقّ : **Lapse of right**. It consists in the lost of a legal right because of the nonfulfilment of a condition. Ex: the right to custody of the female custodian is **lapsed** when she marries an unmarriageable kin to the child.
  - ❖ الموثق : It is called كاتب العدل in most Arab countries. The equivalent in English is « **Notary Public** » : A person authorized to certify a person's signature, administer oaths, certify that documents are authentic, and take depositions.
  - ❖ ضابط الحالة المدنية : The equivalent of this term is the “**registrar**”. He is an official responsible for compiling and keeping a register, ex: marriage register, birth and death registers...etc.
  - ❖ الحجر: It is the act of interdicting or forbidding something or someone legally because of incapacity. This kind of interdiction is referred to by “**legal interdiction**”.
- المحجور عليه : its translation is : **the person placed under legal interdiction** (an insane, demented or prodigal person).
- ❖ النيابة العامة : **Director of Public Prosecutions** is the office or official charged with the prosecution of [criminal offences](#) in several [criminal jurisdictions](#) around the world. The title is used mainly in jurisdictions that are or have been members of the [Commonwealth of Nations](#).
  - ❖ (في الزواج) الدخول/البناء **Consummation of marriage**: The "completion" of a marriage by an act of sexual intercourse.
  - ❖ النشوز: **Violation of marital obligations** : The negligence and nonfulfilemnt of either spouses of their obligations under marriage.

- ❖ الحضانة : **Child custody**: The care of children المحضون : Child. (ة) الحاضن : Custodial parent: The parent that has primary care, custody, and control of the child(ren).
- ❖ سنّ الرشد : **Age of majority**: It is also called “ full age” but the first translation is most common. We adopted “age of majority” in our translation. The age of majority is the legal age when a person ceases to be considered a minor.
- ❖ سنّ التمييز : **Age of discernment** refers to the age at which a child is able to care for him or herself and to determine whether his or her actions are right or wrong.
- ❖ حكم : **Judgment** : A decision made by a court in respect of the matter before it. It is the judge’s final decision in a case.
- ❖ القاصر : a **minor** is a child under the age of majority i.e. he is in his age of minority.
- ❖ بيت الزوجية : **The matrimonial home**: the home in which a husband and a wife live together.
- ❖ رفع دعوى طلاق : **To petition for divorce** : to petition is to apply for a legal remedy or relief that is only available if statute or rules of procedure permit it for example: to petition for divorce.
- ❖ حل (الرابطه الزوجية) : **Dissolution (of marriage)** : It is the legal termination of a marriage. It happens by divorce or death of one of the spouses.
- ❖ فسخ الزواج : **Annulment (of marriage)** : A declaration by the court that a marriage was never legally valid. The main grounds for nullity of a marriage are: close relationship (marriage with one of the prohibited women), lack of age, lack of consent, nonconsummation, and lack of one of the marriage requirements (mahr “dowry”, wali “woman’s guardian”...)

- ❖ **الصلح (بين الزوجين) : Reconciliation:** The coming together of estranged spouses. It happens through appointment of arbitrators from both parties to make peace between them to avoid separation.
- ❖ **النسب : Filiation :** is the legal term that refers to the recognized legal status of the relationship between family members, or more specifically the legal relationship between parent and child.
- ❖ **النفقة : Maintenance:** The provision of food, clothing, and other basic necessities of life. The husband/legal guardian is obliged to maintain his/her family.
- ❖ **الأموال المشتركة : Community property:** Everything that a husband and wife own together.
- ❖ **باطل وفاسد : Null and void :** Having no force, legal power to bind, or validity.
- ❖ **الكتاب : Book :** The main division of the Code.
- ❖ **الباب : Title:** The part into which a book is divided.
- ❖ **الفصل : Chapter:** A [part of a legal document or agreement that deals with a particular point](#).
- ❖ **القسم : Section :** The part into which a chapter is divided.
- ❖ **المادة : Article:** A separate clause or paragraph of a legal document or agreement, typically one outlining a single rule or regulation.
- ❖ **حكم استعجالي/الفصل على وجه الاستعجال : Summary judgment:** is a judgment entered by a court for one party and against another party summarily, i.e., without a full trial. It is a procedural device used during civil litigation to promptly and expeditiously dispose of a case without a trial.
- ❖ **المفقود : A missing person** is a person who has disappeared and whose status as alive or dead cannot be confirmed as their location and fate is not known.

❖ الغائب : An absentee is A person who is not where he or she would normally be found, such as a place of residence or work.

Legal translation involves many difficulties due to its technical language and connection with the legal system of the source language as well as the target language. Translating legal terms is one of these difficulties that we encountered when translating the Algerian Family Code written in Arabic into English. We should identify the skopos, the purpose of the translation in order to define the adequate strategy to be followed to solve this difficulty. As our skopos is to give an English version of the first two books of this code, we adopted the appropriate strategies that fit with this purpose namely: using loan words with explanation, formal equivalence and functional equivalence.

## ***CONCLUSION***

When translating from one legal system into another the differences between those systems have to be taken into consideration.

This paper entitled “Translation of the first and second book of the 2005 Family code of Algeria into English Problems and solutions”, we presented a translation into English of this part of the Code, highlighted the translational problems related to the religious and legal terms and suggested strategies to solve them.

The great difference in matters of personal status between the Algerian legal system based on Islamic law and French law and the British one based on the Common law is the main reason that constitutes a translational problem. This is the reason why we find many religious terms quoted from the Quran, the main source of the Islamic law, and legal terms derived from the French legal system that have no equivalent in English. The legal translation becomes here more difficult and needs appropriate strategies to be performed.

These strategies can not be drawn out without determining the skopos “purpose” of the translation. It is worth reminding that the purpose of our translating a part of Family Code of Algeria is attempting to give an English version to it focusing on the translation of religious and legal terms. Therefore, we adopted some strategies that fit with this purpose. As shown in this paper, we resort to loan words “borrowing” in order to translate the religious terms that have no equivalent in English. We followed each loan word by a brief explanation in English to avoid vagueness. We use formal equivalence “literal translation” and also paraphrase especially with terms quoted directly from the Quran. Functional equivalence was followed with most legal terms, purely or semi-technical.

This research work paves the way and motivates us to deal with more legal texts in the future particularly Algerian texts which lack English translation.

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## ملخص للبحث باللغة العربية

### ترجمة الفصل الأول والفصل الثاني من قانون الأسرة الجزائري، "مشاكل وحلول"

لا يمكن القيام بالترجمة القانونية من دون الأخذ بعين الاعتبار المصطلحات القانونية والثقافية والاختلافات الموجودة بين الأنظمة القانونية.

تتولد المشاكل الترجمة الخاصة بالمصطلحات القانونية المتعلقة بمجال الأحوال الشخصية من اللغة العربية إلى اللغة الإنجليزية من كون أن هذا المجال يستمد مصادره أساسا من الشريعة الإسلامية والقانون الفرنسي ما يعني أن الكثير من مصطلحاته لا تملك مقابلات في اللغة الإنجليزية.

يدرس البحث الذي بين أيدينا هذا المجال من خلال ترجمة الجزء الأول من قانون الأسرة الجزائري المعدل في سنة 2005 والذي لم تتم ترجمته مسبقا إلى الإنجليزية، ويتمثل هذا الجزء في الكتاب الأول المتعلق بالزواج وانحلاله والكتاب الثاني المتعلق بالنيابة الشرعية، فنحن نسعى من خلال هذه الترجمة إلى دراسة اللغة القانونية والترجمة المتعلقة بها، كما أننا نحاول تسليط الضوء على الصعوبات الشائعة التي نواجهها خلال قيامنا بترجمة المصطلحات القانونية والدينية المستعملة في هذا الجزء من القانون، ونقدم بعض الاستراتيجيات المناسبة المتبعة لحلها.

ولهذا الغرض، ينقسم بحثنا إلى أربعة فصول حيث أن تعريف مدوّنتنا وتاريخها وعناصرها يقدمها الفصل الأول، ثم يعرض الفصل الثاني ترجمتنا المقترحة للجزءين الأول والثاني من قانون الأسرة الجزائري الصادر سنة 2005، من جهته، يُحلّل الفصل الثالث من البحث اللغة القانونية، الإنجليزية والعربية، كما يقدم تعريفا مختصرا للترجمة القانونية، وأخيرا، يدرس الفصل الرابع أهم الصعوبات التي واجهناها عند ترجمة المصطلحات الدينية والقانونية كما يقدم بعض الاستراتيجيات المتبعة لحلها اعتمادا على الغاية من ترجمتنا والمتمثلة في تقديم ترجمة انجليزية للجزءين الأول والثاني من قانون الأسرة الجزائري وكذا قائمة للمصطلحات وترجمتها.

***APPENDIX I***  
***ARABIC ENGLISH***  
***LEGAL GLOSSARY***  
***OF THE ALGERIAN FAMILY CODE***  
***"1<sup>ST</sup> AND 2<sup>ND</sup> BOOK"***

The term in Arabic	The equivalent in English	The definition
- أ -		
آثار الطلاق	Effects of divorce	The consequences resulted from the dissolution of marriage i.e custody, the legal waiting period, filiation and maintenance.
أحكام	Provisions	The clause in a legal instrument, a law, etc., providing for a particular matter.
أصول	Ascendants	Those from whom a person is descended, or from whom he derives his birth, however remote they may be. Everyone has two ascendants at the first degree, his father and mother; four at the second degree, his paternal grandfather and grandmother, and his maternal grandfather and grandmother.
امرأة محصنة	Married woman	A woman already married. There is a Latin term for it which is <b>A feme covert</b> : a married woman, under the coverture of her husband.
امرأة معتدة	Woman in her iddah "legal waiting period"	A woman whose husband is death or is divorced who is in the waiting period prescribed by the Sharia "four months and ten days or three months" following the death or the divorce.
انحلال الزواج	Dissolution of marriage	The legal termination of a marriage; for example, by a decree of divorce, nullity, or presumption of death.
- ب -		
بطلان الزواج	Nullity of marriage	The invalidity of a marriage due to some defect existing at the time the marriage was celebrated, (or, sometimes, arising afterwards).
باب	Title	The heading of an Act of Parliament, which may be a long title or a short title.
بيت/مسكن الزوجية	Matrimonial home	The home in which a husband and wife have lived together.
- ت -		
تبن	Adoption	The process by which a parent's legal rights and duties in respect of an unmarried minor are transferred to another person or persons. The child is henceforth regarded as the legal child of the adoptive parents. Upon adoption a child automatically takes the name of his adoptive parents. This is prohibited by the Sharia and most Arab countries forbid it.
تسجيل الزواج	Registration of marriage	The official recording of details relating to a marriage after it has been solemnized. The details usually registered include the names, ages, occupations, and addresses of the parties, names and occupations of their fathers and place of solemnization of the marriage. Certified copies of the details may be issued on request.
تقديم	Court-appointed guardianship	Is the appointment by a court of a person called "guardian ad litem" to act as a testamentary guardian

		to protect a minor's or a legally incompetent person's best interests in case there is no legal guardian or testamentary guardian.
<b>ح</b>		
حجر	Legal interdiction	The act of imposing legal restrictions on the capacity to dispose of property in such a way as to render the acts of a person placed under interdiction null and void. The persons that are liable to interdiction are those possessing nil or partial legal capacity due to mental defectiveness: insanity, prodigality, imbecility or dementia.
حضانة	Custody	The bundle of rights and responsibilities that parents have in relation to a child.
<b>خ</b>		
خطبة	Engagement	Also called betrothal (Khitba): it is a promise to marry.
خلع	Khula	Narrated Ibn Abbas: the wife of Thabit bin Qais came to the prophet PBUH and said: "O Allah's Messenger! I do not blame Thabit for defects in his characters or his religion, but I, being a Muslim, dislike to behave in an un-islamic manner (if I remain with him)". On that Allah's Messenger said to her: "will you give back the garden which your husband has given you as mahr?. She said "yes". Then the prophet PBUH said to Thabit: " O Thabit, accept your garden, and divorce her once".(Sahih El Boukhari, vol 7, Hadith N°.197.) At the light of this hadith, we conclude that khula is A kind of divorce in which a wife seek divorce from her husband by giving him a certain compensation, or returning back the mahr which he gave her. N.B: The Arabic word Khula "خلع" means "extraction, putting off one's clothes".
<b>د</b>		
الدخول	Consummation of a marriage	The "completion" of a marriage by an act of sexual intercourse.
دعوى طلاق	Petition for divorce	A written application for divorce filed by either spouse stating the facts that have led to the marital breakdown and accompanied by a statement of arrangement for children.
<b>ر</b>		
رضاع	Suckling	Breastfeeding. This word is mentioned in the Quran and translated into English by "to suck": "The mothers shall give suck to their children for two whole years that is for those (parents) who desire to complete the term of <b>suckling</b> " (Quran 2:233).

ز		
زواج/نكاح الشبهة	Invalid marriage	A marriage which is null and void because of the existence of a marriage impediment or the conditions of marriage are not fulfilled.
س		
سجل الحالة المدنية	Civil Status register	A register recording all the documents related to the Civil Status: births, deaths, marriage, divorce...
سن الرشد	Age of Majority / "full age"	The age of 18 years. It is the legal age when a person ceases to be considered a minor.
سن التمييز	Age of discernment	Discernment means ability to distinguish or judge. It is the quality of being able to grasp and comprehend what is obscure. For instance, being of such an age that the law will impose ordinary legal responsibility upon the person.
ش		
الشريعة الإسلامية	Sharia "Islamic law".	The law derived from the Qu'ran and Sunnah (the traditions) of the prophet Mohammed. The sources of Sharia also include Islamic scholarly consensus developed after Mohammed's death and analogical reasoning by Muslim judges.
ص		
صداق	Mahr « dowry »	Obligatory bridal money given by the husband to his wife at the time of marriage. "And give to the women (whom you marry) their mahr with a good heart". Verse N° 04 of surah of An-Nisa.
صلح	Reconciliation	The coming together of estranged spouses. To make peace again between two spouses to avoid separation. "if you fear a breach between them (the man and his wife), appoint two arbitrators, one of his family and the other of her's, if they both wish for peace, Allah will cause their <b>reconciliation</b> "Verse N° 35 of surah of An-Nisa.
ض		
ضابط الحالة المدنية	Registrar	An official responsible for keeping official lists especially of births, deaths and marriage.
ط		
طلاق قبل الدخول	Divorce before consummating marriage.	Annulment of the marriage by divorce before it is consummated (before an act of sexual intercourse between the spouses).
ع		
عائلة	Family	A group of people connected by a close relationship. For legal purposes a family is usually limited to relationships by blood or marriage.

العدة	Iddah Lagal waiting period	Allah's prescribed waiting period for a woman after divorce or death of her husband, after the expiry of which she can remarry another person. This period is of <b>four months and ten days</b> for a woman whose husband is death or is a missing person, of <b>three months</b> for a woman who has passed the age of monthly courses and of <b>three menstrual periods</b> for a non pregnant woman who has consummated marriage.
عقد الزواج	Marriage contract	The contract on which are recorded the official details relating to a marriage after it has been solemnized. The details usually registered include the names, ages, occupations, and addresses of the parties, names and occupations of their fathers, and place of solemnization of the marriage.
<b>غ</b>		
غائب	Absentee	A person who is not where he or she would normally be found, such as a place of residence or work.
<b>ف</b>		
فاتحة	Fatiha "the expression of offer of the bride's wali and acceptance of the groom followed by the reading of the Surah Al-Fatiha"	A speech delivered at the time of concluding the marriage contract. There should be <b>an offer</b> or proposal from the the wali "woman's guardian" or the person who is acting in his place, who should say to the groom "I marry so-and-so to you" or similar words. Then the expression of <b>acceptance</b> on the part of the groom or whoever is acting in his place, who should say, "I accept," or similar words. Then, the two parties and the witnesses read the Surah Al-Fatiha". During this, the amount of the mahr "dowry" is agreed upon. After the Fatiha, the two spouses become legal husband and wife under the sharia "Islamic law".
فاحشة مبينة	Open indecency	An act that brings dishonor on the other spouse and make life between the two spouses unbearable i.e commitment of an open illegal sexual intercourse.
فروع	Descendants	Those persons who are born of/ descended from another; the persons who proceed from the body of another, such as a child, grandchild, etc., to the remotest degree. The term is the opposite of "ascendant,"
فصل	Chapter	One of the parts into which a book is divided.
<b>ق</b>		
قاصر	Minor	A minor is a child under the age of majority.
قانون الأسرة	Family code	The law relating to family disputes and obligations and legal relationships of the family members such as marriage, divorce, legal representaion...etc

قراية	Consanguinity	Blood relationship, relationship by blood, i.e. by descent from a common ancestor. People descended from two common ancestors are said to be of the whole blood. If they share only one ancestor, they are of the half blood..
قراء	Menstrual periods	The <b>Menstrual periods or menstrual cycle</b> is the cycle of natural changes that occurs in the <a href="#">uterus</a> and <a href="#">ovary</a> as an essential part of making <a href="#">sexual reproduction</a> possible. “And divorced women shall wait (as regards their marriage) for three menstrual periods”. Surah 2-Al Baqarha 228.
قسم	Section	One of the parts into which something can be or has been divided.
قوة قاهرة	Force majeure	Irresistible compulsion or coercion. The phrase is used particularly in commercial contracts to describe events possibly affecting the contract and that are completely outside the parties' control. Such events are normally listed in full to ensure their enforceability; they may include acts of God, fires, failure of suppliers or subcontractors to supply the supplier under the agreement, and strikes and other labour disputes that interfere with the supplier's performance of an agreement. An express clause would normally excuse both delay and a total failure to perform the agreement.
<b>ك</b>		
كتاب	Book	The main division of a Code.
كفالة	Kafala	The “kafala” is the commitment to take care, free of charge, of the education and protection of minors as a parent would do for his or her own children. The kafal process is the adoption according to the Islamic law “Sharia”. It is legally distinct from adoption and the child is not treated like a birth child in many important regards. Parents who “adopt” a child in the kafala process become their legal guardians but they are not subject to the full range of rights and responsibilities as are biological parents Kafala children do not inherit from their kafala parents according to Islamic inheritance law, but remain the heirs of their biological parents.
<b>م</b>		
مادة	Article	A clause in a document. The plural, articles, is often used to mean the entire document.
المحجور عليه	A person placed under legal interdiction/ interdicted person	The interdicted person is either an insane, prodigal or demented person. He is placed under legal interdiction because he is incapable of sound

		judgment and rational behavior.
مزاڊ علني	Auction	A method of sale in which parties are invited to make competing offers ( <b>bids</b> ) to purchase an item.
مصاهرة	Affinity. Relationship by marriage	The relationship created by marriage between a husband and his wife's blood relatives or between a wife and her husband's blood relatives. Some categories of people related by affinity are forbidden to marry each other.
مفقود	Missing person	A <b>missing person</b> is a person who has disappeared and whose status as alive or dead cannot be confirmed as their location and fate is not known.
مقدم	Guardian ad litem.	A person appointed by the court to protect a minor's interests in proceedings affecting his interests.
موانع الزواج	Marriage impediments	Family relationships within which marriage is prohibited. There are two categories: permanent impediments (such as the mother for the man or the uncle for the woman) and temporary impediments (a woman in her legal waiting period).
<b>ن</b>		
نساء محرمات	Prohibited women	Women a man can not marry because of consanguinity, relationships by marriage and suckling. They are all fixed in the verse n° 22 of surah of An-Nisa: “forbidden to you (for marriage) are: yours mothers, your daughters, your sisters, your father’s sisters, your mother’s sisters, your brother’s daughters, your sister’s daughters, your foster mothers who gave you suck, your foster milk suckling sisters, your wives’ mothers, your step-daughters under your guardianship, born of your wives to whom you have gone in –but there is no sin on you if you have not gone in them (to marry their daughters)- the wives of your sons who (spring) from your own loins, and two sisters in wedlock at the same time, except for what has already passed, verily Allah is Oft-forgiving, Most merciful”.
نسب	Filiation	<b>Filiation</b> is the legal term that refers to the recognized legal status of the relationship between family members, or more specifically the legal relationship between parent and child.
نشوز	Violation of marital obligations.	Failure to fulfill the obligations imposed by the marriage obligations by either spouse.
نفقة	Maintenance	The provision of food, clothing and other basic necessities of life. The obligation after a divorce of one spouse to support another or of a parent to support a child of the family.
نيابة شرعية	Legal representation	The act of a person taking the place of another person because of his young age, insanity, dementia or prodigality. It happens through legal guardianship, testamentary or court-appointed guardianship.

النيابة العامة	Director of Public Prosecutions	<b>Director of Public Prosecutions</b> is the office or official charged with the prosecution of <a href="#">criminal offences</a> in several <a href="#">criminal jurisdictions</a> around the world. The title is used mainly in jurisdictions that are or have been members of the <a href="#">Commonwealth of nations</a> .
و		
وصي	Testamentary guardian	A guardian appointed by the last will of a father to be the guardian of real and personal estate of his child until the child reaches full age.
ولاية	1.Guardianship  2.legal guardianship	1. It means the willingness to take responsibility to manage or to take up the authority to administer something such as managing the orphans by attending to their needs and to become a wali for a woman by performing a marriage contract for her. 2. The <a href="#">legal authority</a> (and the corresponding <a href="#">duty</a> ) to care for the personal and <a href="#">property interests</a> of another person, called a <a href="#">ward</a> .
ولي	1. Wali "woman's guardian"  2. The legal guardian	1. The word ' <b>wali</b> ' is taken from the Arabic word Al-Wilayah (الولاية). Someone who possesses or has been granted by Sharia the authority to perform a marriage contract. It is often translated by « gardian » in many hadiths, i.e : "The marriage of a woman who marries without the consent of her guardians is void." (Hadith by Abu Daud). 2. The person who has the parental responsibility on the child.