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# RIGHTS OF A WOMAN UNDER FEDERAL LAW NO. 28 FOR 2005 REGARDING PERSONAL STATUS ("PERSONAL STATUS LAW")

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## BACKGROUND

The client (woman) is a foreign European national. Her foreign European husband intends to initiate divorce proceeding in the UAE. The parties are Muslims, residing in Dubai for the past 7 years. They have been married for 10 years. The husband has assets in UAE and company in India. They have two children in wedlock. The client would like to know her rights in the event the divorce proceeding is initiated in UAE.

## WHETHER PERSONAL STATUS LAW IS APPLICABLE TO THEM

*If the divorce applicants are both Muslims, but from different countries and are residents in the UAE, they will be divorced according to the administrative laws in their country, or the UAE law, whichever they wish. While Sharia is same in all Muslim countries, there are a few administrative differences between the various schools of thought. Personal Status Law is applicable to citizen of the UAE and non-citizens unless one of them shall hold to the application of this law and it shall retroactively govern the divorce certificates and divorce cases for which a decisive judgment has not been ruled.*

### General Regulations: Article 1

The regulations of this law (Federal Law No. 28 for the year 2005 regarding Personal Status) shall govern all facts that occurred following the enforcement of its regulations. It shall retroactively govern the divorce certificates and divorce cases for which a decisive judgment has not been ruled. And governs citizen of the UAE and non-citizens unless one of them shall hold to the application of this law.

### Jurisdiction - Article 5

The state's courts shall have the competent jurisdiction to view cases related to the personal status that are raised against the citizens and foreigners who have domicile, or a place of residency or a place of work in the State.

## CUSTODY OF THE CHILD

*The custody of the child/children shall be given to the mother however the mother cannot travel with the child without the consent of the father, and he alone has the right to keep the passport of the child/children.*

### **Custody of the child - Article 145**

The right of the child's custody shall be established for the mother, provided the judge shall take into consideration the interest of the child while adjudging the custody.

**Approval of the guardian required to travel - Article 149** It shall not be permissible for the custodian female to travel with the child in custody abroad except with the approval of the status guardian<sup>1</sup> in writing. If the guardian abstains from this matter, the same shall be brought before the judge.

### **Period of Custody - Article 156**

The women's custody ends when the male child reaches 11 years of age and female child reaches 13 years of age. This is unless the court believes that extending the age is for the benefit of the child under custody - this is until the male reaches puberty age and the female child marries.

### **Passport of the child with the guardian - Article 157**

Without prejudice to the provisions of article 149, the guardian shall have the right to keep the passport of the child under custody except in case of travelling abroad it shall be delivered to female custodian.

## ALIMONY AND MAINTENANCE

*Under Personal Status Law, the wife is entitled to temporary alimony<sup>2</sup>, alimony during the Iddat period<sup>3</sup>, right to have a place to reside, and one-year alimony*

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<sup>1</sup> *The guardian is the father of the child under Article 182.*

<sup>2</sup> *Alimony under Article 63 of the Personal Status Law is defined as "Alimony shall include food, clothing, residence, medical treatment and service for the wife...It shall be considered when estimating the alimony the opulence of the spender, the status of the person disbursed on, the economic position at the time and place, provided it shall not be less than the minimum subsistence level.*

*payable in installments. The father is also required to provide for the child who has no money.*

#### **Temporary Alimony - Article 68**

The judge shall have the right to decide upon the request of the wife a temporary alimony for her. His judgment shall be summary self-executing by the force of the law.

#### **When Alimony is due - Article 69**

The alimony and residence are due to the divorce woman by a revocable divorce or an irrevocable divorce and she is pregnant. It is also due to the divorce woman by an irrevocable divorce and she is not pregnant but for residence only.

#### **When Alimony shall not be provided - Article 71**

The alimony of the wife shall abate in the following cases

- 1- if she denies herself to her husband or abstained from moving to the legal conjugal home without a legal excuse.
- 2- If she leaves the conjugal home without a legal excuse.
- 3- If she prevents the husband from entering the conjugal home without a legal excuse.
- 4- If she refrained from travelling with her husband without a legal excuse.
- 5- If it is passed a judgment or a rule from the court that is custodial in respect of a right not belonging to the husband and it is being executed.

#### **When Alimony shall abate - Article 73**

The obligation with the wife's alimony shall abate with

- 1- Settlement
- 2- Acquittal
- 3- The death of one of the spouse unless a judicial rule was passed for.

#### **Right to have a residence - Article 74**

The husband shall have to prepare for his wife at his location an appropriate residence that is compatible with their conditions.

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<sup>3</sup> *Iddat (also pronounced **IDDAAH**) is a period of waiting that Islam has imposed upon a woman who has been divorced or whose husband has died, after which a new marriage is permissible. The Iddat period shall start as from the occurrence of separation for three clean periods for those with menstruation.*

#### Provision of the child on the father - Article 78

The provision for the young child who has no money shall be on the father. This is till the girl marries, and the boy reaches the level where he earns his living.

#### Alimony during Iddat period - Article 107

The competent judge shall issue after the occurrence of divorce upon the request of those concerned a writ determining the woman's alimony during her waiting time (Iddat), the children provision, who has the custody right, the visitation of the child under the guardianship.

#### Alimony - Article 140

If the husband divorces his wife with whom he consummated the marriage under a true marriage to his sole will and without her requiring it, she shall be entitled for a compensation other than the Iddat period alimony according to the condition of the husband and which, shall not exceed the alimony of one year for her equivalent. It shall be permissible for the judge to have it paid in installments according to the wealth or insolvency of the husband. It shall be taken into consideration when estimating it what was inflicted harm on the woman.

#### VISITATION RIGHTS

*The judge decides the visitation rights with respect to the place, time and the responsible person for bringing the child under custody.*

#### Visitation rights - Article 154

If the child under custody is in the custody of one of the parents, the other parent shall have the right to visit the child, to receive the child and to accompany him according to whatever the judge decides provided that it shall be determined the place, the time and the responsible person for bringing the child under custody.

#### DISTRIBUTION OF ASSETS

*Personal Status Law is silent on the issue that whether the wife is entitled to the assets of the husband. The concept of joint property arising through*

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[info@legalservicesdubai.com](mailto:info@legalservicesdubai.com)

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*marriage does not exist, and property is only regarded as jointly owned where both husband and wife contributed financially to its purchase during the course of marriage. Upon divorce, the property would be divided according to each party's contribution, so where a husband purchased the family home using his salary alone, he is regarded as the sole owner.*

Under Shari'a, any gift given to a woman by her fiancé before marriage is her property, and the husband has no legal right to it after marriage. At the time of marriage, a Muslim woman receives mahr, often in the form of money that is her property. Even if the woman is independently wealthy, she is not responsible both legally and culturally for expenses relating to her clothing, health care, household needs, food, and recreation. Any income or profits a wife earns is hers alone. In the event of divorce, any unpaid part of the agreed-upon mahr is owed to the woman immediately, and the husband is responsible for maintaining her financially until she is remarried

Women in the UAE exercise the right to own land and have full, independent use of their property from the age of 18. A married woman need not share her assets with her husband, who has no legal claim to her property whether they are married or divorced. Article 21 of the UAE Constitution guarantees the protection of private property, which states that deprivation of private property is only permissible in 'circumstances dictated by the public benefit in accordance with the provisions of the law and on payment of a just compensation.

## GENERAL COMMENTS

The Constitution of the UAE upholds the principle of equal treatment of all citizens, but does not specifically address gender-based discrimination. All legislation in the United Arab Emirates ("UAE") is based on Islamic Sharia law. However several laws such as Personal Status Law and national policies continue to restrict women to their traditional roles as wives and mothers rather than supporting their equality with men across all aspects of society and discriminates against women in several areas.

It appears that women also face discrimination in regard to parental authority. The Sharia law and Personal Status Law views fathers as the natural guardians of children, while mothers are merely the physical custodians and not legal custodians. In the event of divorce, mothers are normally granted physical custody of daughters until they reach puberty and of sons until they reach 13

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years. Women who choose to remarry do so at the cost of forfeiting their custody rights.

Due to the various restrictions imposed on the divorced wife we would advise to apply the personal law of their respective country of the client in order to gain more leverage on issues such as division of assets, longer period of payment of alimony and legal custody of the children.

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