

CHAPTER V

JORDAN

I

THE OTTOMAN LEGACY

The Hashimite Kingdom of Jordan came into existence under its present name in 1947 and proclaimed Islam as its state religion.¹ Till 1917 family law and succession were governed in its territory by the uncodified *Hanafi* legal system. The Turkish *Ottoman Law of Family Rights, 1917* was made applicable in Jordan, with the omission of a few articles, soon after its enactment, and remained in force there till after the creation of the new State.² In August 1951 the Jordanian legislature repealed the *Ottoman Law of Family Rights, 1917* and replaced it by a new law—*al-Qanūn al-Huqūq al-Āila* (the Law of Family Rights³). The main purpose of its enactment was to give to the country a codified family law of its own in the place of that enacted in a foreign country, namely, the *Ottoman Law of Family Rights, 1917*. Most of the articles of the new Jordanian law, however, merely reproduced the corresponding provisions of the said *Ottoman Law*.

COMMON PROVISIONS IN JORDANIAN AND OTTOMAN LAWS

In respect of the following aspects of family law the Jordanian enactment of 1951 retained, either wholly or with minor changes, the provisions of the *Ottoman Law of Family Rights, 1917*:

- (i) impediments to the validity of marriage,⁵
- (ii) solemnization of marriage.⁶

1. The *Constitution of Jordan*, 1951, article 2.

2. Anderson, 'Recent Developments in *Shari'a* Law', 42 *Muslim World* (1952), 198, n. 47.

3. See article 131 of this Law, Appendix to this chapter, *infra*, 83.

4. This law is hereinafter referred to as the '*Ottoman Law*' and the Jordanian *Law of Family Rights, 1951* as the '*Jordanian Law*'. Text of the former will be found in the Appendix to Chapter II and extracts from that of the latter in the Appendix to this chapter.

5. *Ottoman Law*, articles 13 to 19; *Jordanian Law*, articles 9 to 16.

6. *Ottoman Law*, articles 35-36; *Jordanian Law*, articles 18-19.

- (iii) guardian's rights regarding the marriage of a woman,⁷
- (iv) general effects of a valid marriage,⁸
- (v) husband's liability regarding payment of dower,⁹
- (vi) liability of husband and right of wife with regard to the latter's maintenance,¹⁰
- (vii) general principles of divorce,¹¹
- (viii) revocation of divorce,¹² and
- (ix) rights and obligations of a divorced wife during the period of 'idda.¹³

THE RESIDUAL LAW

Like the *Ottoman Law of Family Rights*, 1917 the new Jordanian law, too, did not make any provision relating to inheritance, wills and other aspects of personal property law. About these and other matters not covered by its provisions, the Jordanian law specifically laid down that they would be governed by the uncodified principles of the *Hanafī* legal system.¹⁴

II

DISTINCTIVE FEATURES OF THE JORDANIAN LAW

A—LAW RELATING TO MARRIAGE, ETC.

The *Jordanian Law of Family Rights*, 1951 has some distinctive features which do not have a parallel in the *Ottoman Law* of 1917. Some of these are, however, shared by the former with the Egyptian laws of 1920 and 1929 surveyed in chapter III of the present study. A summary of some prominent features of the Jordanian law is given below.

POLYGAMY

The Jordanian law authorises a woman to stipulate with the husband, at the time of marriage, the condition that if he contracts another marriage during the continuance of their marital union, she would have a right to pronounce a 'delegated divorce' (*talāq al-tafwīd*). Such a stipulation will,

7. *Ottoman Law*, articles 48-49; *Jordanian Law*, articles 25-26.

8. *Ottoman Law*, articles 69-70, 73-74; *Jordanian Law*, articles 31-32, 35-36.

9. *Ottoman Law*, articles 80 to 89; *Jordanian Law*, articles 40 to 42, 44 to 50, 52 to 54.

10. *Ottoman Law*, articles 93 to 100; *Jordanian Law*, articles 57 to 63.

11. *Ottoman Law*, articles 102-103; *Jordanian Law*, articles 66-67.

12. *Ottoman Law*, articles 112 to 124; *Jordanian Law* articles 78 to 88.

13. *Ottoman Law*, articles 139 to 147, 151-152; *Jordanian Law*, articles 101-112.

14. Article 130.

not, however, be enforced by the Court unless it is properly incorporated in the marriage-deed duly registered.¹⁵

DISPARITY IN AGE AT THE TIME OF MARRIAGE

Under the Jordanian law, two persons cannot become husband and wife if the difference in their age exceeds twenty years, except with the permission of the Court, which can be obtained only if :

- (i) the consent of the party who is younger in age has not been procured by compulsion, and
- (ii) the proposed marriage will not be prejudicial to the interest of the younger party.¹⁶

VOID MARRIAGES

Article 29 of the Jordanian law lists only two circumstances in which a marriage shall be void (*bātil*), namely, when it violates the bar of affinity or when it is a marriage of a Muslim girl with a non-Muslim man. As regards other marriages considered void by the traditional *Hanafī* law, e.g., one within the forbidden degrees of blood-relationship or fosterage, the Jordanian law is silent. The provision of article 29 cannot, however, be regarded as exhaustive. As provided by article 130, the uncodified *Hanafī* law relating to the aforementioned bars to a valid marriage will continue to apply.

WIFE'S LIABILITY TO TRAVEL AND LIVE WITH THE HUSBAND

Under the general Islamic law a Muslim wife is bound to accompany her husband to any place of his choice provided there is no legal impediment to her doing so. This legal liability has been enforced by statutory law in some Muslim countries, without specifying any instance of a legal impediment thereto. Only the Jordanian law, while enforcing this principle, adds that a fear that the husband will cause injury to the wife or the fact that it is not otherwise safe for her to accompany him shall constitute a legal impediment to her accompanying the husband.¹⁷

Similarly, a wife should ordinarily live with her husband and not leave his house without his permission; if she does so, she will lose her right to maintenance. Under the Jordanian law, if the wife leaves her husband's house because he has maltreated or injured her, her right to maintenance will remain unaffected by her conduct.¹⁸

15. *The Law of Family Rights*, 1951, article 6.

16. *Id.* article 21.

17. Article 33.

18. Article 64.

CONSUMMATION OF MARRIAGE

The Jordanian law provides that if after the conclusion of a marriage-contract the wife has received her dower from the husband, or has agreed to its payment being deferred till a stipulated time, she cannot refuse consummation of the marriage.¹⁹

MEDICAL AND EDUCATIONAL EXPENSES OF WIFE AND CHILDREN²⁰

Under the Jordanian law, when a lawfully married wife delivers a child begotten by the husband, whether during the continuance of a marriage or after its dissolution, the husband shall be responsible for the maternity-expenses.

In the case of wife's illness her husband, and if a child falls ill, its father, will be responsible to meet the expenses of treatment provided that the wife or the child, as the case may be, is legally entitled to receive maintenance.

As regards the educational expenses of a child, its father or, failing him, its mother, shall be liable to pay the fee at the school, college or university, depending on the child's capacities and with regard to the circumstances of the father or the mother who pays it. If the payment of such expenses is made by the mother she can recover it from the child's father when he is financially able to make the reimbursement.

The above two provisions of the Jordanian law do not have a parallel in laws enacted in any other Arab country.

EFFECT OF CERTAIN DIVORCES

A divorce pronounced by a person while he is unconscious of the implications of his words or conduct, or is under the effect of intoxication, or when that person is under compulsion, or uses it only as a threat or an inducement, shall not have the effect of dissolving the marriage.²¹ The same is the rule about a divorce which is pronounced in vague terms and is not addressed particularly to a wife.²² A so-called triple divorce shall, as under the Egyptian law,²³ constitute only a single divorce.²⁴

DISSOLUTION OF MARRIAGE BY THE COURT

Various provisions of the Jordanian law furnish to a married woman the following grounds on which she can seek dissolution of her marriage by the Court:

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19. Article 20.
 20. Article 65.
 21. Articles 68, 70.
 22. Article 71.
 23. *Law No. 25 of 1929*, article 3; see *supra* Appendix to Chapter III, 61.
 24. Article 72.

- (i) desertion on the part of husband for at least one year,²⁵
- (ii) disappearance of the husband for one year or more making it impossible for the wife to get her maintenance,²⁶
- (iii) the fact that the husband has been a missing person (*mafqūd*) for at least four years, there being no news about his survival²⁷; in such a case if the wife marries a third person after the expiry of 'idda, reappearance of the first husband shall have no effect on the second marriage,²⁸
- (iv) ill-treatment on the part of the husband; in such a case the matter shall first be inquired into by arbitrators representing the spouses, who can award a divorce or a *khul'*,²⁹
- (v) failure of the husband to provide maintenance,³⁰ and
- (vi) impotency of the husband or his affliction with an injurious disease neither known to the wife at the time of marriage nor overlooked by her thereafter.³¹

It may be noted here that the year mentioned in connection with the above provisions relating to dissolution of marriage by the Court is a lunar year,³² whereas under the Egyptian law a solar year is taken into consideration for similar matters.³³

MAINTENANCE OF RELATIVES

The Jordanian law provides that a person is bound to maintain another person from whom he or she inherits, without regard to whether the two have blood relation with each other or not.³⁴

CUSTODY OF CHILDREN

In the matter of custody of children, the law of Jordan recognises the rules of the traditional Islamic law under which a boy can remain with the mother up to seven years and a girl up to nine years of age; but it authorises the court to extend these limits by two years if it is necessary in the interest of the boy or girl concerned.³⁵

25. Articles 89-90.

26. Article 91.

27. Article 92.

28. Article 95; cf. the *Ottoman Law of Family Rights*, 1917, article 129 and the *Egyptian Law No. 25 of 1920*, article 8, see Appendix to Chapters II and III, *supra*, 146, 60.

29. Articles 96-97.

30. Articles 98-99.

31. Articles 83-85.

32. Article 127.

33. *Law No. 25 of 1929*, article 23, *supra* 63.

34. Article 117.

35. Article 123.

B—LAW OF SUCCESSION

As stated earlier, intestate and testamentary succession do not form part of the provisions of the Jordanian *Law of Family Rights*, 1951. Therefore, these matters continue to be governed by the traditional legal system of the *Hanafī* school of Islamic law. However, in accordance with article 130 of the codified law of 1951, in the case of plurality of juristic opinion within the *Hanafī* school, such matters will be governed by the “authoritative verdicts” under the said school.

APPENDIX TO CHAPTER V
TEXT OF THE JORDANIAN LAW OF FAMILY RIGHTS, 1951*

(Select Provisions)

1. This law shall come into effect on 15 August, 1951.

PROMISE TO MARRY

2. A mere promise to marry shall not give rise to a contract of marriage; such a promise cannot be enforced.

3. Where after an engagement either party dies or the engagement is broken, any present made by way of dower by the man, or its value, shall be recoverable by him. Ordinary presents exchanged between the parties shall be governed by the law of gift.

MARRIAGE-AGE

4. The minimum marriage-age is eighteen years for men and seventeen years for women; a boy who has completed his fifteenth year can marry with the permission of the *Qādi*; and such a girl can do so with his permission and her guardian's consent.

5. Where a girl, after having completed seventeenth year of her age, desires to marry a person who is her 'equal' but her guardian unreasonably withholds his consent to the marriage, the *Qādi* can dispense with the requirement as to his permission.

6. Where the difference in age between the parties to an intended marriage is more than twenty years, permission of the *Qādi* or his deputy shall be required for the solemnization of the marriage. The *Qādi* shall give such permission if he is satisfied that the party younger in age has consented to the marriage without any compulsion or duress and that the marriage is not against the interest of such party. If the consent of the younger party has been obtained by compulsion or duress, the marriage shall be *fāsīd* (irregular) under article 18.

GUARDIANSHIP IN MARRIAGE

7. Guardianship in marriage is confined to the relations of the ward who are 'agnates in their own right' (*'asaba bi nafsihi*).

8. The person acting as guardian in marriage must be legally responsible (*mukallaf*).

CONTRACT OF MARRIAGE

17. Presence of two witnesses, who are legally responsible (*mukallaf*), at the time of solemnization of marriage is essential. The contract of marriage shall be concluded in the presence of the *Qādi* or a person deputed by him who shall issue a certificate of marriage.

* This paraphrase of the *Jordanian Law of Family Rights, 1951* has been prepared by the author of the present study on the basis of Anderson, 'Recent Reforms in *Shari'a* Law', 42 *Muslim World* (1952), 190-206.

For the articles of the Jordanian law omitted here, see *supra*, Chapter V, notes 5 to 13 and the Appendix to Chapter II, 40 to 52.

20. The *Qādi* or a person specially deputed by him shall attend the marriage ceremony and arrange to register it.

21. If a stipulation is made in the marriage contract for the benefit of either party, it must be complied with, e.g., a stipulation that the wife should have the power to divorce herself in specified circumstances or should live in a specified place or that the husband should not have a co-wife. But such a stipulation can be enforced only if it is incorporated in the registered marriage-deed and also in the certificate issued by the *Qādi*. Violation of such a stipulation shall give to the wife a right to seek dissolution of marriage.

22. A marriage in contravention of the provision of article 17 shall not be invalid but the parties, their witnesses and the person who conducted the marriage, shall be liable to the penalties laid down by the *Penal Code*.

EQUALITY IN MARRIAGE

23. It is essential for the validity of a marriage that the husband should be 'equal' to his wife in financial aspects and this means that he should be able to advance her prompt dower (*mahr al-mu'ajjal*) and to provide maintenance.

24. Equality is to be considered at the time of marriage and subsequent disappearance thereof has no effect on marriage.

27. If the husband is not the 'equal' of his wife, the *Qādi* may dissolve the marriage before the appearance of pregnancy.

IRREGULAR AND VOID MARRIAGES

28. A marriage parties to which are not competent to contract, or which is solemnized without the presence of witnesses or contracted under duress, or which violates the rule of 'unlawful conjunction', or the female party to which is observing *'idda*, or which is a *mut'a* (a temporary marriage), shall be irregular (*fāsīd*).

29. A marriage within the prohibited degrees of affinity and that of a Muslim woman with a non-Muslim man shall be void (*bātil*).

30. An allegation as to irregularity of a marriage based on the age of any party thereto cannot be heard by the *Qādi* where the wife has already delivered a child or pregnancy has become apparent, or if the conditions relating to age laid down in article 4 have been complied with, at the time the action is brought.

33. After receiving her prompt dower (*mahr al-mu'ajjal*) the wife is bound to live in her husband's house and to travel with him to another place if desired by him, unless there is any legal impediment. Where it is feared that in doing so the husband intends to injure her, or if he cannot be trusted with her, such a fact shall constitute a real impediment within the meaning of this article.

37. A void or an irregular marriage, if not consummated, shall have no legal effects whatsoever.

38. If an irregular marriage is consummated, rights and obligations as to dower, *'idda*, legitimacy of children and the bar of affinity shall be established but not the other effects of a valid marriage.

39. A void or irregular marriage shall not be allowed to continue and if it is not dissolved by the parties the *Qādi* may dissolve it in the interest of morality.

DOWER

43. Where the wife has received her dower, or where the parties have agreed to defer the payment of dower for a stipulated period, the wife cannot refuse consummation of marriage.

51. A dispute concerning dower shall not be entertained if the claim made in this respect is different from the entry in the certificate of marriage or is not proved by written evidence.

55. Where a marriage has not yet been consummated and the husband is unable to pay the prompt dower, the wife can bring an action for the dissolution of the marriage. The *Qādi* shall thereupon give one month's time to the husband and if he fails to pay it within that period, the marriage may be dissolved. If, in such a case, the husband is absent, or if his whereabouts are not known, or if he has no property in the place, the marriage may be dissolved forthwith.

MAINTENANCE OF WIFE

56. The scale of wife's maintenance shall be fixed up with regard to the position of her husband only. Maintenance shall become payable when its amount has been agreed upon by the parties or fixed by the *Qādi*.

64. Where the wife leaves her husband's house without his permission, she will lose her right to maintenance for the period concerned. It will be a good defence for her in such a case that her husband has beaten or maltreated her or has otherwise caused injury to her.

MEDICAL AND EDUCATIONAL EXPENSES OF WIFE AND CHILDREN

65. (i) When the wife delivers a child, the husband is responsible for the payment of the remuneration to a doctor or midwife, whether the marriage is extant or has been dissolved.

(ii) Where the wife who is entitled to maintenance falls ill requiring treatment, the husband shall be liable for the expenses of the treatment which shall be fixed up in accordance with his financial condition. The same will be the liability of a father with regard to his minor children entitled to maintenance.

(iii) The liability of a father to maintain his children includes expenses of their education. The causes which make maintenance of a major son binding on the father include his studies and, in such cases, the fee at any level of education shall have to be paid. These matters are to be decided in accordance with the capacities of the child and the circumstances of the father.

(iv) Where the father is poor and cannot pay the medical expenses or the cost of education binding on him, or where he is absent, the mother, if she is in easy circumstances, can be compelled to meet such expenses. The money so spent by the mother shall be a debt against the father to be recovered from him when his financial condition improves.

EFFECTS OF CERTAIN DIVORCES

68. A formula of divorce uttered under intoxication or compulsion or during unconsciousness shall have no effect.

70. A divorce hanging on a condition or suspended to a future time, which is used only either as an inducement or a threat, shall have no effect.

71. A divorce which is not addressed to or which does not specifically relate to a particular wife shall have no effect.

72. A divorce accompanied by a number, whether expressly or impliedly, shall effect only one divorce.

75. A conditional divorce shall be valid only if dissolution of marriage is actually intended.

76. Postponement of the operation of a divorce to a future time is valid, provided the dissolution of marriage is actually intended.

77. An unregistered divorce cannot be pleaded by the husband before a *Qādi*.

DISSOLUTION OF MARRIAGE

89. Where a husband goes away from his wife for a year or more without any lawful reason, the wife who suffers injury from the absence of the husband may claim dissolution of her marriage, even if he has left property from which she can get her maintenance.

90. Where the husband can be contacted, the *Qādi* shall first give him a warning to return or send for the wife within a specified period and if he fails to do so or to show reasonable causes for his failure to do so, the marriage shall be dissolved. Where he cannot be contacted, it can be dissolved forthwith.

91. Where the husband disappears in the circumstances which make it impossible for his wife to obtain maintenance from him, she can apply for the dissolution of her marriage. In such a case if one year elapses without any news from him, the marriage may be dissolved after necessary investigation.

92. Where the husband disappears leaving property from which maintenance can be obtained by the wife but the wife suffers injury from loneliness and separation, she can be allowed to keep *'idda* of death and remarry after the lapse of four years from the date of her petition.

93. Where the husband is sentenced to imprisonment for three years or more, the marriage may be dissolved after the wife has suffered at least one year of separation on that account.

94. Where a divorce is granted in accordance with the foregoing articles and the woman marries a third person, subsequent reappearance of the former husband shall have no effect on the second marriage.

95. Where a judgment of death has been passed by the *Qādi* as regards the husband and afterwards he turns up, the second marriage of the wife shall stand.

96. If a woman alleges that her husband ill-treats her in such a way that continuance of marriage is not possible with regard to the social status of the parties, the *Qādi* may appoint arbitrators from their families, who shall look into the matter and attempt a reconciliation.

97. If the arbitrators cannot effect a reconciliation and find fault on the part of the husband or on both sides, dissolution of marriage may be decreed. If the fault is found on the part of the wife, a *khul'* may be decreed.

98. Where a wife demands dissolution of marriage on the ground that her husband does not provide maintenance to her, the *Qādi* can dissolve the marriage with immediate effect, if the husband possesses no known property from which a maintenance decree can be executed. But if the husband proves that he is destitute, he shall first be given a period of respite.

99. Where the husband is absent but is in a known place, if he has left no property for the maintenance of his wife he will be warned to come back or send funds for the wife within a specified period; failing which the marriage shall be dissolved. But where the husband cannot be easily contacted, or is of unknown whereabouts, or is 'missing' (*mafqud*), the marriage shall be dissolved forthwith provided he has left no property out of which a maintenance order can be executed.

100. Dissolution of marriage granted under articles 98 and 99 shall constitute a divorce revocable during the period of *'idda* by the husband, if he is willing and able to provide maintenance.

DIVORCED WIFE

113. The maintenance payable during *'idda* to a divorced wife who is entitled thereto under law is a debt against the husband from the date of divorce.

115. A divorced wife must observe the *'idda* in the house where she is normally living at the time of divorce; she cannot remarry during such period.

MAINTENANCE OF RELATIVES

116. A person is liable to provide maintenance to his lineal ascendants from whom he inherits under law.

117. Collateral relations, whether within the bar of blood-relationship' (*hurmat al-ḡarāba*) or not, are liable to maintain the relatives from whom they inherit.

118. If a nearer relative who is liable to provide maintenance is himself a destitute, the liability will not shift to the remoter relatives.

CUSTODY OF CHILDREN AND LEGITIMACY

123. The ordinary period of custody (*hadāna*) is seven years for boys and nine years for girls; but the *Qāḍī* can extend these limits for two years in the interest of children.

124. Paternity of a child shall not be established where it is proved that the parents never had access to each other from the date of marriage.

MISSING PERSONS

125. The *Qāḍī* shall pass a decree to the effect that a person be considered dead four years after the date of disappearance where he is missing and his death seems probable. In other cases, the period after which he can be considered dead shall be decided by the *Qāḍī*.

126. Where a judgement of death is given by the *Qāḍī* in respect of a missing person, his wife can remarry after observing the *'idda* of death and the property of the deceased shall be distributed among the heirs entitled thereto and alive at the time of judgement.

MISCELLANEOUS

127. The year referred to in this Law shall be a lunar year.

130. The authoritative principles of *Hanafī* law shall be applied to the matters for which no provision is made by this Law.

131. The *Ottoman Law of Family Rights, 1917* is repealed.