

CHAPTER VIII

MOROCCO

CODIFICATION OF THE CLASSICAL LAW

The *Mālikī* school of Islamic law had, from its very beginning, a deep influence in Morocco. In respect of family law and succession, the Moroccan Muslims always followed the *Mālikī* legal system virtually exclusively. The reform of family law in several Islamic countries, specially in Tunisia in 1956, had its echoes in Morocco as well. Some leaders in the country felt that their nation which had had a prominent place in the legal history of Islam had not been keeping pace with the changing legal trends in the Muslim world. It was, therefore, decided that the *Mālikī* family law obtaining in the country should be codified. It was further realized that some undesirable elements had crept into the family law and that their removal was called for.

The codification and reform of family law as proposed in Morocco was to be based on the Doctrine of Public Interest (*masālih al-mursala*) of the *Mālikī* jurists.¹ In August 1967, a Law Reform Commission was set up under a Royal Decree for drafting a code of personal status and succession.² The Royal address inaugurating the Commission clarified the background, purpose, scope and basis of the proposed reform in the following words:³

It is well known that we are a people with a noble ancestry in the field of legal studies and legislation, and that we have such riches in these matters as to make it unnecessary for us to adopt the legislation of other countries. All that is lacking is the true manifestation of these riches, purged of those barren interpretations and corrupt customs which have adhered to them and which,

1. Mahmassani, *Philosophy of Jurisprudence in Islam*, tr. F. J. Ziadeh (Lieden, 1961), 87-89.

2. Decree No. 1-57-190 of 19 August, 1957.

3. As quoted in Anderson, 'Reform of Family Law in Morocco' 2 *J.A.L.* (1958) 140.

by reason of their repetition over the centuries, become as it were additions to the *Sharī'a*, which are regarded as integral part of it. Some of these additions have, moreover, impeded the development and civilization of our country. So it is our duty to return to the riches we have in the *Sharī'a* and work for its revivification—incorporating it in a series of precise articles in the form of a code. This is a noble task in which some other Muslim countries have anticipated us appreciating, as they do, the benefit and gain it represents.

On the basis of a comprehensive draft prepared by the Commission, six books of law were issued in five instalments which together constituted the *Code of Personal Status, 1958 (Mudawwanat al-Ahwāl al-Shakhsīya)*.⁴ These *Books* deal with marriage, termination of marital contract, birth and its results, legal capacity, representation, bequests and inheritance.

The new Moroccan *Code* is, thus, fairly comprehensive. Yet in respect of the matters that might have been left out by its framers the *Code* repeatedly provides that these will be governed by those provisions of the *Mālikī* school which are “dominant, better known, or generally prevailing.”⁵

Tunisia and Morocco both are *Mālikī* countries and naturally, therefore, the codes of personal status enacted in these countries are generally based on the traditional *Mālikī* legal system. Several provisions of the *Moroccan Code of Personal Status, 1958* are similar to their counterpart in the *Tunisian Code of Personal Status, 1956*. The following are prominent among such common provisions:

- (i) rules relating to engagement and breach of promise to marry,⁶
- (ii) the requirement of guardian's consent for the marriage of minors⁷, (the age of majority is twenty years in Tunisia⁸ and twenty one years in Morocco⁹; in both countries, the Court has the power to intervene if the guardian's conduct is unreasonable.¹⁰),
- (iii) settlement of disputes relating to household goods between the

4. The first two *Books* were issued on 22 November 1957 and enforced with effect from January 1, 1958. The remaining four *Books* followed on 18 December 1957; 25 January, 20 February and 3 April 1958.

5. Articles 82, 172, 216 and 297.

6. *Tunisian Code of Personal Status, 1956*, (hereinafter referred to as the *Tunisian Code*), articles 1-2; *Moroccan Code, of Personal Status, 1951* (hereinafter referred to as *Moroccan Code*), articles 1-3.

7. *Tunisian Code*, article 6; *Moroccan Code*, article 9.

8. Article 153.

9. Article 137.

10. *Tunisian Code*, article 6, *Moroccan Code*, article 13.

spouses, or between one spouse and the heirs of the other, or between the heirs of both spouses,¹¹

(iv) maintenance of wife and relatives,¹²

(v) custody of children and the Court's power to extend the normal period of custody in children's interest¹³, and

(vi) lineage and acknowledgement of filiation.¹⁴

The Tunisian law on these subjects has been surveyed in the preceding chapter and that should illustrate also the corresponding provisions of the Moroccan law. In this chapter only some salient features of the Moroccan Code will be summarized.

II

SALIENT FEATURES OF THE MOROCCAN LAW

A—LAW RELATING TO MARRIAGE, ETC.

MARRIAGE-AGE

A male is competent under the Moroccan law to marry on the completion of eighteen years and a female on that of fifteen years of age. However, if a person who desires to marry is below the age of twenty one years, his or her freedom is curtailed by the requirement that the marriage-guardian must give consent to the proposed marriage¹⁵.

BIGAMOUS MARRIAGES

The treatment of bigamy in the Moroccan *Code* is significantly different from the Tunisian reform on the subject. Article 30(1) of the Moroccan Code states that if any injustice between the co-wives is feared, plurality of wives is not permitted. No provision is, however, made by the Code for inquiry by any authority into a husband's capacity to do justice between the co-wives in the event of his contracting a bigamous marriage. The aforementioned provision, therefore, constitutes a reiteration of the *Qur'ānic* injunction that if one finds oneself unable to treat the co-wives equitably, one must confine to a single wife.

The Moroccan law, however, provides certain other rules relating to polygamy. First, no second marriage with a woman shall be contracted

11. *Tunisian Code*, articles 26-27; *Moroccan Code*, articles 39-40.

12. *Tunisian Code*, articles 37-47; *Moroccan Code*, articles 115 to 129.

13. *Tunisian Code*, articles 54 to 67; *Moroccan Code*, articles 97 to 111.

14. *Tunisian Code*, articles 68 to 76; *Moroccan Code*, articles 83 to 96.

15. *The Code of Personal Status*, 1958, articles 8-9.

unless the fact of the man being already married is communicated to her.¹⁶ Secondly, a woman may stipulate in her marriage contract against her husband's right to contract a bigamous marriage; in such a case, if the stipulation is violated, the wife shall have a right to dissolution of her marriage.¹⁷ Thirdly, even in the absence of such a stipulation, if the second marriage causes injury to the first wife, the Court may dissolve her marriage.¹⁸ The Code once again stresses that if a man has more than one wife he must treat the co-wives equitably in accordance with the *Qur'anic* injunction.¹⁹

CONDITIONAL MARRIAGE

Article 38 of the Moroccan Code provides that if a marriage contract is coupled with a condition which is opposed to the *Shari'a* or to the essence of the marital contract, the marriage shall be valid and the condition inoperative. It adds that a condition to the effect of wife's freedom to work in national interest shall not be invalid.

DIVORCE BY HUSBAND

Unlike Tunisia, the Moroccan law does not provide for the intervention of Court in the matter of divorce by husband. It only insists on the registration of a divorce with Divorce Notaries.²⁰ Following the Egyptian reforms later adopted in the Sudan and Syria, the Moroccan law, however, neutralizes the effect of certain divorces. Thus, a divorce pronounced during intoxication or under compulsion or in a fit of violent anger shall not be operative in Morocco.²¹ Similarly, if a husband swears that henceforth his wife is unlawful for him, or that if she does or abstains from doing a specified thing she will stand divorced, the marriage will remain unaffected.²²

A triple divorce, namely, one accompanied by a number, expressly or impliedly, shall constitute only a single divorce.²³

DISSOLUTION OF MARRIAGE BY THE COURT

A married woman can seek dissolution of her marriage by the Court, under the Moroccan Code, on the following grounds:

- (i) husband's failure to provide maintenance,²⁴

16. Article 30(2).

17. Article 31.

18. Article 30 (2).

19. Article 35.

20. Article 48.

21. Article 49.

22. Articles 50, 52.

23. Article 51.

24. Article 53.

- (ii) husband's affliction with chronic diseases injurious for the wife,²⁵
- (iii) injurious treatment on the part of husband making the continuance of married life impossible, for a woman of wife's status,²⁶
- (iv) husband's failure to resume marital relationship for a period of four months, following an oath of non-cohabitation, known as 'vow of countenance' (*ila'*), taken by him,²⁷ and
- (v) desertion by husband, for a period of at least one year, causing injury to wife.²⁸

RELIEF TO DIVORCED WIFE

Article 60 of the Moroccan Code requires a husband who unilaterally divorces his wife to give a consolatory gift (*mut'a*) to the divorced wife. Its value shall depend on the financial condition of the husband and the social status of wife.

DIVORCE WITH CONSIDERATION (*khul'*)

The *Mālikī* law of *khul'* is enforced by the Moroccan Code with emphasis on the free desire of wife in such a transaction.²⁹ It is, however, only after the completion of twenty one years of age that a wife can enter into an agreement of *khul'*.³⁰ Further, the consideration in a transaction of *khul'* should not prejudice the rights of the children.³¹

REMARRIAGE AFTER A THIRD DIVORCE

In respect of a husband's freedom to remarry a woman whom he has divorced thrice consecutively, the Moroccan law significantly differs from the Tunisian law. Unlike Tunisia,³² the law in Morocco specifically recognises the traditional Islamic principle under which a third divorce operates as a bar to remarriage, which can be removed only through the procedure of an 'intervening marriage' prescribed by law.³³

B—LAW OF SUCCESSION

Like the Books of Inheritance and Bequests, (*Books IX and XI*) of the Tunisian *Code of Personal Status* 1956, the Moroccan Books of Inheritance

25. Articles 54-55.

26. Article 56.

27. Article 58.

28. Article 57.

29. Article 63.

30. Article 62.

31. Article 65.

32. See the controversy on the interpretation of article 19 of the *Tunisian Code of Personal Status*, 1956 in Chapter VII *supra*, 102

33. Article 71; see Fyree, *Outlines*, 150-51

and Bequests (*Books V and VI*) are also based, to a large extent, on the traditional *Mālikī* law. Their provisions represent a codification of the *Mālikī* system of intestate and testamentary succession with some minor changes in a few cases. The following features of these *Books* of the Moroccan Code are notable.

OBLIGATORY BEQUESTS

The principle of obligatory bequests, adopted in Tunisia from the *Egyptian Law of Bequests 1946*, has been incorporated into the *Mālikī* law in Morocco with some changes.³⁴ Morocco was the fourth and so far the last country after Egypt, Syria and Tunisia to adopt this device for the benefit of orphaned grandchildren. Under the law in Morocco, the right to an obligatory bequest is available to the children (how low soever) only of a predeceased son of the *propositus*.³⁵

POSITION OF KILLERS

A legatee who has killed the legator, or an heir who has killed the *propositus*, shall have no rights in the estate of the deceased, provided that the killing was intentional and not inadvertent.³⁶ In a case of inheritance, if the heir's act was unintentional, it will not affect his position in the scheme of distribution of the estate, although he shall be liable for the payment of blood money (*diya*).³⁷

34. Articles 266, 269.

35. Cf. the *Tunisian Code of Personal Status*, 1956, article 192; for a detailed discussion of the law of obligatory bequests see chapter III, *supra*, 55-56.

36. Articles 179, 229.

37. Article 229.

APPENDIX TO CHAPTER VIII
TEXT OF THE MOROCCAN CODE OF PERSONAL STATUS, 1958*

(Extracts)

BOOK I

MARRIAGE

MARRIAGE CONTRACT AND ENGAGEMENT

1. Marriage is a legal bond of a lasting nature uniting the spouses with a view to safeguarding their chastity and increasing the numerical strength of the nation by the creation of family, under the husbands' supervision, on a firm basis guaranteeing to the spouses discharge of family liabilities in security, love and mutual respect.

2. Engagement (*khitba*) means promise to marry. It does not constitute a marriage. Recitation of *Fātiha* and the custom of exchange of gifts effect only' an engagement.

3. The promisor or the fiancee can break the engagement. The man can claim the presents made by him unless he himself has broken the engagement.

ESSENTIALS OF MARRIAGE AND ITS CONDITIONS

4. (1) A marriage shall be solemnized by offer by one party and acceptance by the other party through the words which expressly or by custom effect a marriage.

(2) An offer or an acceptance expressed in writing or by sign is valid where the person doing so is unable to speak.

5. It is essential for the validity of a marriage that two trustworthy witnesses or notaries should hear the offer and acceptance, on one and the same occasion, made by the bridegroom and the bride's guardian, after she has given her consent and authorisation to the guardian.

The *Qādī* may, in exceptional cases, hear a claim as to the existence of marriage and may admit legal evidence in proof thereof.

6. The spouses must be sane, have attained puberty; and be free from all *Sharī'ā* impediments.

7. The *Qādī* may authorise the marriage of an insane or an imbecile if it is established by advice of experts in mental diseases that the marriage will be beneficial for the cure, provided that the other spouse has been informed of it and has consented thereto.

8. A man is competent to marry on the completion of the eighteenth year of age, and if there is any doubt as to his physical fitness, the *Qādī* shall decide

*This English translation of the extracts from the *Moroccan Code of Personal Status, 1958* has been prepared by the author of the present study on the basis of an official French text found in *Revue Algerienne*, 1958/iii/2, 25-36, 38-44; 1959/iii/2, 1-11, 160, 254-70, 399-406.

the matter; a woman is competent to marry⁴ on the completion of the fifteenth year of her age.

9. Where a party to marriage is below the legal age of majority, the consent of the guardian shall be a further condition; and if the guardian withholds his consent the *Qādi* shall decide the matter, if the girl insists on marriage.

MARRIAGE-GUARDIANSHIP

13. Where the guardian neglects to contract the ward into marriage, the *Qādi* shall ask him to do so, and if he refuses to do so, the *Qādi* himself can give her in marriage with a person who is her 'equal', with proper dower.

'EQUALITY' IN MARRIAGE

14. (a) Only the woman herself or her guardian can seek annulment of a marriage on the basis of the 'inequality' of the husband.

(b) 'Equality' is to be assessed at the time of marriage and shall be ascertained in accordance with custom.

15. It is only the woman herself who can object to any disparity of age beyond the customary limits between her and her husband.

DOWER

*16. Dower means any property given by the husband representing his intention to have a family life based on mutual affection and company.

17. Any thing that may be the subject of a legal obligation may form the dower; there is no maximum or minimum thereof.

18. Dower is the property of wife which she can dispose of as she wants. The husband cannot set off any part thereof against any household goods given by him to the wife.

19. The father or other guardian cannot demand from the husband any money for handing her over to him or for acting as guardian.

23. Where a legally major girl agrees to a dower which is less than her proper dower (*mahr al-mithl*), her guardian cannot object to it.

24. Where there is a dispute between the spouses as to the payment of dower, the wife's claim shall be accepted if the dispute arises before consummation of marriage. But if it arises after that, the husband's statement shall be accepted.

IMPEDIMENTS TO MARRIAGE

30. (1) If any injustice between the wives is feared, plurality of wives is not permitted.

(2) Where a husband contracts a second marriage, and the wife had not stipulated against such an act in the marriage contract, the *Qādi* may consider whether the second marriage has caused any injury to the first wife; marriage with a second wife shall not be contracted unless she is informed that the husband is already married to another woman.

31. A wife may stipulate in the marriage-contract that her husband shall not marry a second woman along with her, and if the husband violates such a stipulation she will have a right to seek dissolution of her marriage.

EFFECTS OF MARRIAGE

33. A valid marriage shall give rise to all its effects as to matrimonial rights and obligations.

34. The mutual rights and obligations of the spouses are :
- (a) lawful cohabitation,
 - (b) benevolent mutual behaviour, respect and affection and joint protection of personal interests,
 - (c) mutual rights of inheritance,
 - (d) personal effects, e.g., paternity of children and bar of affinity,
35. Rights of wife against her husband :
- (a) legal maintenance, including food, clothing, medical aid and lodging,
 - (b) justice and equal treatment, where the husband has more than one wife,
 - (c) permission to see her parents in accordance with custom, and
 - (d) complete freedom to deal with her property, the husband having no rights therein.
36. Rights of the man against his wife :
- (a) protection by the wife of her body and chastity,
 - (b) obedience to the husband,
 - (c) suckling the children within her capacity,
 - (d) supervision and management of the house, and
 - (e) customary respects for the parents and other relatives of the husband.

38. If a marriage contract includes a condition opposed to its *Shari'a* from or the essence or purposes of the contract, the marriage will be valid and the condition inoperative; it is not a condition opposed to the essence of the contract if the wife stipulates that she shall work in the interest of the country.

DISPUTES BETWEEN THE SPOUSES

39. Where there is a dispute between the spouses as to the household property and there is no evidence, the husband's statement on oath shall be accepted with regard to things concerning men, and wife's statement so made in regard to those concerning women; as regards commercial items, the statement of that spouse shall be accepted who is conversant with such things. If the dispute relates to something common to both men and women, they will both swear on oath.

40. The above rule shall also apply where the dispute arises between one spouse and the heirs of the other.

Book II

TERMINATION OF MARITAL CONTRACT

DIVORCE (*Talâq*)

44. Divorce means dissolution of marriage by repudiation by the husband or by his agent or by a person having an authority delegated by the husband, or by the wife having option to do so, or effected by the *Qâdi* under a deerec of dissolution of marriage.

45. The object of *talâq* may be a lawfully married wife or a divorcee observing *'idda* of a revocable divorce; in any other case a divorce will not be valid, even if conditional.

46. *Talâq* may take place when effected verbally in explicit terms, or in writing, or by non-equivocal signs or gestures in the case of illiterates.

47. Where a *talāq* is pronounced during the wife's menstruation period, the *Qādi* shall compel the husband to revoke it.

48. A *talāq* may be registered by two competent witnesses who shall be the notaries appointed for the purpose.

49. A *talāq* pronounced while the husband is drunk or under compulsion, or during violent anger, e.g., on account of uncontrollable provocation, shall have no effect.

50. A divorce pronounced as an oath or a swearing that the wife is henceforth unlawful shall not effect a divorce.

51. A *talāq* pronounced with a number whether in words or by sign or in writing shall effect only one divorce.

52. A *talāq* suspended on the performance of or abstention from some act shall not be operative.

WANT OF MAINTENANCE

53. (1) The wife may demand from the *Qādi* dissolution of marriage when her husband is present but neglects to maintain her. In such cases, if the husband has any known property, the *Qādi* shall order for payment of maintenance from such property. Where there is no known property and the husband, who is not destitute, persists in not maintaining his wife, dissolution of marriage shall be granted forthwith. If the husband establishes that he is incompetent to provide maintenance to the wife, the *Qādi* shall give him a period of respite not exceeding three months, and after the expiry of that period, if the husband still cannot provide maintenance, shall grant dissolution of marriage.

(2) Dissolution of marriage granted under this article shall constitute a divorce revocable by the husband during the period of *'idda* if he expresses willingness for, and is capable of, providing maintenance to the wife.

DISSOLUTION OF MARRIAGE ON MEDICAL GROUNDS

54. Where a wife comes to know that her husband is suffering from a chronic disease which is either incurable or can be cured only in more than one year's time, and which makes cohabitation injurious, e.g., insanity, white or black leprosy, she can claim dissolution of marriage, provided that she did not know the fact at the time of marriage and also did not give consent to the continuance of marital relations after having known about it. Medical advice may be sought for by the *Qādi* in such cases. Such a dissolution of marriage granted by the *Qādi* shall constitute an irrevocable divorce. *

CRUELTY

56. If the wife accuses her husband of a treatment injurious to her which is of such a nature that it is not possible for women of her status to continue the marital relationship in such circumstances, the *Qādi*, if he fails to reconcile the parties, may dissolve the marriage. If the wife makes the complaint but cannot prove her allegation, the *Qādi* shall appoint arbitrators to settle the matter. They shall attempt to effect a reconciliation, and if, they fail, they shall refer the case to the *Qādi* who shall decide on it in the light of their findings.

DESERTION

58. Where the husband has taken an *īla'* (Vow of Countenance), or an oath to the effect that he would desert his wife and has given up cohabitation accordingly, the wife may refer the matter to the *Qādi* who shall defer a decision on it for four months.

If after the expiry of that period no resumption of relation between the spouses takes place, dissolution of marriage amounting to a revocable divorce shall be granted.

59. If the husband disappears, without a lawful excuse, for more than one year, the wife can claim dissolution of marriage amounting to an irrevocable divorce, if she suffers injury, even if there is property from which she can get her maintenance. If the husband can be contacted, the *Qādī* shall first fix a period directing him either to return to the wife or send for her to join him within that period. Dissolution of marriage amounting to an irrevocable divorce shall be granted if he does not act or produce lawful excuse within that period.

POST-DIVORCE RELIEF

60. A husband who, on his initiative, divorces his wife shall give her a consolatory gift (*mut'ā*) in accordance with his financial condition and the status of wife. No such gift is necessary when dower was specified but the wife was divorced before consummation of marriage.

DIVORCE WITH CONSIDERATION (*KHUL'*)

61. The spouses may mutually agree to dissolution of marriage by *khul'*.

62. A woman who has attained the legal age of majority can effect a *khul'*. If a woman desires separation from her husband, no *khul'* can take place where she is below the age of majority, unless the guardian of her property gives his consent.

63. It is an essential element of *khul'* entitling the husband to the stipulated consideration that the wife must have had a free desire to be separated from him, without any duress and without an injury.

64. Anything that can be the object of a legal obligation may form consideration for a *khul'*.

65. If the wife is poor, a *khul'* is not permissible in consideration of something which belongs to the children.

KINDS OF DIVORCE AND THEIR EFFECTS

66. Any divorce granted by the *Qādī* shall be irrevocable, except one granted on account of *ilā'* (Vow of Countenance) or for want of maintenance.

67. Any divorce pronounced by the husband shall be revocable, except a third divorce, the one before consummation, a *khul'*, and a *talūq al-tafwīd* (delegated divorce).

68. Where a divorce is revocable, the husband may resume cohabitation during *'idda* without paying any additional dower and without the intervention of the bride's guardian. Such a right will not lapse by renunciation.

69. The marriage is dissolved after the expiry of *'idda* of a revocable divorce.

70. The first or second irrevocable divorce dissolves the marriage; but remarriage is not forbidden following such divorces.

71. A third divorce shall result into immediate termination of the marital union and would operate as a bar to a remarriage unless the divorced wife has undergone an effective and lawfully consummated intervening marriage with a third person, later dissolved and followed by expiry of *'idda*.

GESTATION

76. The maximum period of gestation is one year from the date of divorce or the husband's death, as the case may be. Where, after the expiry of such period, there remains

some doubt as to pregnancy, the *Qādi* shall decide the matter with the assistance of medical experts. In that case, extension of the period of *'idda* or the end thereof may be decreed in accordance with the medical advice.

82. On all matters not included in this Law, those provisions of the school of Imām Mālik shall be applied which are dominant, better known or generally prevailing.

MAINTENANCE

115. Every person gets maintenance from personal property, but maintenance of a wife is the liability of her husband.

116. The bases of the right of maintenance are marriage, relationship, and contractual obligation.

118. Maintenance of wife includes residence, food, clothing, customary medical aid, and necessities of life in accordance with custom.

119. (1) In the fixation of the scale of maintenance, regard shall be had to the husband's financial condition, status of the wife, custom, circumstances of the time and average cost of living.

(2) The husband cannot accommodate with the wife, in the same house, a co-wife without the consent of the former.

121. Maintenance shall be directed to be paid by the husband since it became obligatory upon him; it shall not lapse by passage of time.

122. Maintenance of the wife lapses by the death of the husband, release by the wife and by the exit of a wife observing *'idda* of a revocable divorce from the house of *'idda* without a lawful excuse and without the husband's consent.

123. Maintenance of a pregnant wife shall not lapse on account of 'disobedience' (*nushūz*). If a wife becomes disobedient (*nāshiza*), the *Qādi* shall warn her to return to the marital home, and if she fails to do so, may order for the suspension of her maintenance.

126. (1) The father is bound to maintain his minor children who cannot earn.

(2) Girls' right to maintenance continues till it becomes binding on their husbands, and that of boys till they become major and are capable to earn.

(3) Where a child is a diligent student, its right to maintenance shall continue till the completion of education, or till the completion of twenty one years of age.

129. Where the father is incapable of providing maintenance to the children, it shall be the liability of the mother, if she is in easy circumstances.

BOOK V

BEQUESTS

176. There will be no bequest for an heir.

178. Bequest is valid when the object thereof is either existing or is about to come into existence.

181. A suspended or conditional bequest is valid provided that the condition is not illegal. A condition is legal if it involves a benefit to the legator, the legatee, or a third person, and is not opposed to the purposes of the Law-giver.

REVOCATION AND RENUNCIATION OF BEQUESTS

182. The legator can revoke or cancel a bequest even if he is committed not to do so.

183. A renunciation of the bequest made by the legatee is not effective unless made after the legator's death.

203. If a person bequeaths something to a person and subsequently bequeaths the same thing to a third person, the object of the bequest shall be distributed between the two legatees.

211. A bequest becomes void upon the death of the legatee before the legator, destruction of the specified object of the bequest before the legator's death, renunciation of the legacy after the legator's death, provided the legatee is major, and revocation of the legacy, expressly or impliedly, by the legator during his life time.

BOOK VI

INHERITANCE

ORDER OF DISTRIBUTION

218. The following shall be the order of the various rights in the property left by the deceased :

- (a) the rights relating to the corpus of the property,
- (b) the funeral expenses of the deceased.
- (c) his debts,
- (d) valid bequests left by him, and
- (e) rights of the heirs in the prescribed order.

MISSING PERSON

219. Where the death of a missing person seems to be quiet probable, judgement shall be passed that he be considered dead after the expiry of four years from the date when there remains no hope to get any news of his life or death. In all other cases, the *Qādī* shall decide on the period, by making all necessary investigation, after the lapse of which such a judgement may be passed.

KILLER-HEIR

229. A person who has killed the propositus, or who is suspected to have done so, shall not inherit to him. There will be no blood-money (*diyya*) in such a case. An heir so disqualified shall not exclude others. If such a person killed the propositus by mistake, he shall not be disqualified, shall pay blood money, and shall exclude others in accordance with the rules.

OBLIGATORY BEQUESTS

266. Where a person dies, his son having died before or with him, bequest of an amount laid down in the following articles shall be binding on him from a third of his estate in favour of the grandchildren, if any.

267. The amount of such a bequest shall be equal to the share which their father would have received if presumed to have died after the deceased, provided that it shall not exceed a third of the estate.

268. There shall be no right to an obligatory bequest where the grandchildren either inherit to their father's ascendant—grandfather or grandmother—or get a gratuitous gift or bequest from the deceased equal to the amount of the obligatory bequest. If the

amount received by them is less than their entitlement, the balance shall be made up, and if it is in excess thereof, the validity of the excess will depend on the heirs' consent. Where an amount has otherwise been bequeathed in favour of some of the children only, the rest of them will be given their due under obligatory bequests.

269. An obligatory bequest shall be given to the children of sons and to the children of sons' sons, how low so ever, whether one or more—in accordance with the principle of a 'double share for the male'—each ascendant excluding his own descendant only and each descendant inheriting from his own ascendant only.