92

PREZZO SHS. 10=

Faafin Rasmi ah

EE JAMHURIADDA DIMUQRADIGA SOMALIYA

Sannadka 3aad | Muqdisho, 8 Maarso 1975 | L. 1 R. 3

Laanta Maamulka Faafinta Rasmiga ah
ee ka tirsan madaxtooyada Golaha Sare ee Kacaanka

FAAFIN BIL SOO BAXA

QIIMADU: waa 5 shilin lambar waliba — RUKUNKA: Sanadii waa Shl. 100 Somaliya gudeheeda — dibaddedana waa Shs. 300. Rukunka la weydiisto waqtiga loo' gooyey wuxuu ka bilabmaa 1 Janayo. Qiimaha qortitaanku F. R. halkii sadar iyo waxii ka yar waa 2 laba shilin — Rukunka iyo qoritaanku waxaa la weydiistaa Laanta Maamulka Faafinta Rasmiga ah — Lacagta waxaa lagu bixinayaa Xafiiska Canshuraha ee Wasaaradda Lacagta

KOBNIIN

BOGGA KOWAAD

SHARCI

SHARCI L. 23, Tr. 11 Jennaayo 1975 — *Sharciga ku saabsan Qoyska.* Bog. 1

SHARCI L. 23, Tr. 11 Jennaayo 1975 — *Sharciga ku saabsan Qoyska. Af Carabi.* Bog. 1

BOGGA LABAAD

XEER

W. M.

BOGGA SADDEXAAD

TALOOYIN, ISGARSIIN, OGEYSIIS, IYO WAXII LA MID AH

W. M.

Madbacada Qaranka — Muqdisho

Muqdisho, 11 Jannayo 1975 Lam. 23
SHARCI L. 23, Tr. 11 Jannayo 1975.

GUDDOONSHAHA
GOLAHA SARE EE KACAANKA

ISAGOO ARKAY Xashidii 1aad iyo tii 2aad ee Kacaanka;

ISAGOO AQOONSAN In ey tahay lagama maarmaan in la soo dejiyo Sharci ku saabsan nolosha Qoyska Soomaaliyeed si loo dhiso bulsho caafimaad qabta;

ISAGOO TIXGELINAYA Taladii uu soo jeediyey Xoghayaha Dawladda ee Wasaaradda Garsoorka iyo Arrimaha Diinta;

ISAGOO TIXGELINAYA Go'aanka ay isku raaceen Golaha Sare ee Kacaanka iyo kan Xoghayayaasha Dawladda.

WUXUU SOO SAARAYA

Sharciga hoos ku qoran:

Qod. 1aad

Waxaa la Guddoomiyey Xeerka Qoysaska «Istituto Personale» oo ku lifaaqan Sharcigaan.

Qod. 2aad

Hal nuqul oo ka mid ah Sharcigan, kuna qoran Af Soomaaliga oo uu saxiixay Madaxweynaha Golaha Sare ee Kacaanka, uu la saxiixay Xoghayaha Dawladda Wasaaradda Garsoorka iyo Arrimaha Diinta, wuxuu ka dhigan yahay gundhig, wuxuuna oolidoona Xafiiska Garyaqaanka Guud ee Dawladda.

Qod. 3aad

Xeerkaan waxaa loogu dhaqmayaa waxyaalaha uu kulminaayo oo bilaabo 11kii Jan. 1975.

Jaalle S. G. Maxamed Siyaad Barre
GUDDOONSHAHA
GOLAHA SARE EE KACAANKA

Jaalle Dr. Cabdisalaam Sh. Xuseen
Xoghayaha Dawladda ee Wasaaradda
Garsoorka iyo Arrimaha Diinta

XEERKA DHISMAHA QOYSKA

BUUGGA KOWAAD

GUURKA IYO FURIDDA

Qaybta Koowaad

G U U R K A

Qod. 1aad

Ku dhaqanka sharciga

Xeerkaan waxaa loogu dhaqmayaa waxyaalaha uu kulminaayo oo dhan. Haddii uusan jirin qodob gaar ahaaneed oo ka mid ah waxaa la raacayaa araa'da ugu raajaxsan Madhabka AL IMAAN AL SHAAFICI, kaddibna Mabaadi'da guud ee Shareecada Islaamka iyo caddaaladda ijtimaaciga ah.

MADAXA I

BALLANQAADKA GUURKA

Qod. 2aad

Ballaanqaadka guurka iyo «yaradka»

1. Waxaa u bannaan dhinac kasta in uu u ballanqaado guur dhinaca kale, hase yeeshe ballan qaadkaas khasab kuma aha qofka soo ban dhigay in uú fuliyo. Qofkii aan dooneyn in uu guto ballanka, waxaa waajib ku ah in uu dhinaca kale u sheego si cad.

2. Laguma khasbi karo qofna in uu bixiyo «yarad», qofka iskiisa u bixiyana xaq uma laha in uu soo ceshado, haddii jebinta ballanka gafkiisu sabab u yahay.

Qod. 3aad

Ballanqaad sharci ah

Ma bannaana in guur loo ballan qaado qof dumar ah oo la qabo, ama qof ku xiran ballan guur ee qof kale, sidoo kale ma bannaana in guur loo ballan qaado qof dumar ah oo sharciga ka reebayo iney xaas u noqoto ninka ballan qaadka sameynaya ama qof dumar ah oo cidda ku jirta.

MADAXA II

HESHIISKA GUURKA

Qod. 4aad.

Caddeynta, dhimaha iyo ujeedada guurka

1. Guurku waa heshiis dhexmaraya nin iyo naag ka siman xagga xuquuqda iyo waajibaadka, waxaana saldhig u ah is-afgarasho iyo xaqdhowr ka dhaxeeya laba dhinac oo heshiinaya, ulajeedadiisuna waxaa

weeye dhisid qoys is-haysta, iyadoo la tixgelinaayo in uu qoysku yahay tiirka asaaska ah ee bulshada.

2. Ninka naagta qaba ayaa ah madaxa qoyska sharci ahaan.

Qod. 5aad

Sameynta guurka

1. Guurka waa in lagu sameeyaa Garsooraha hortiisa ama qof ay ruqsad u siisay Wasaaradda Garsoorka iyo Arrimaha Diinta.

2. Haddii ay suurtoobi weydo in guurka lagu sameeyo Garsoore hortiisa ama qof ay Wasaaraddu ruqsad u siisay, waxaa hortiisa lagu sameyn karaa qof aqoon dheer u leh sharciga Islaamka.

3. Soomaalida deggan dibedda waxey guurka iyo furidda ku sameyn karaan Qunsuliyadda (Consolato) Soomaaliyeed ee ku taal meesha ay deggan yihiin.

4. Guurka waa in laga diiwaaneeyaa ama laga qoraa Maxkamadda Degmada ugu dhow ama xafiisyada u gaarka ah arrimahaas muddo 15maalmood gudaheed ah oo ka billaabaneysa maalintii guurkaas la sameeyey, hase yeeshe dadka deggan miyiga waxaa loogu dheerayn karaa 40 maalmood.

5. Mas'uuliyadda diiwaan gelinta guurka waxay saaran tahay qofka heshiiska sameeyey.

6. Qofka aan oofin mas'uuliyadda kor lagu soo sheegay oo aan keenin cudurdaar la oggolaan karo waxaa lagu ganaaxayaa 100 Shilin oo Soomaali ah.

7. Ilaalinta diiwaan gelinta iyo ridídda ganaaxa waxey galeysa awoodda Guddoomiyaha Maxkamadda Racfaanka ee Gobolkiisa.

Qod. 6aad

Tiirarka asaaska u ah guurka

Tiirarka guurka waxaa weeye:

Weydiin iyo oggolaasho oo ku cad hadalka labada dhinac oo heshiiska sameynaysa iyadoo ey joogaan laba qof oo marag ah,

Qod. 7aad

Khasabka, Sakhrad iyo Waalida

Waxba kama jiraan guurka qofka lagu khasbo xagga jirka iyo nafsaddaba (violazione fisica e morale) sidoo kale qofka sakhraanka ah iyo kan waalaan guurkooda waxba kama jiraan, hase yeeshe waa bannaan tahay in loo guuriyo qofka waalan markey sugnaatay in uu u baahan yahay dabadeed iyadoo ey ku talinayaan si cad Guddi Takhtara gaar ah.

Qod. 8aad

Habka guurka

1. Guurka waxaa lagu sameyn karaa weydiin iyo oggolaasho ka timaada laba qof oo xiskoodu dhan yahay (persone capaci).

2. Weydiinta guurka iyo oggolaanshihiisu waxay noqon kartaa afka iyadoo si tifaftiran loogu caddeeyo, weydiinta iyo oggolaanshuhu waa inaan wax shuruud ah lagu xirin, waqti go'anna loo qaban.

3. Weydiinta iyo oggolaanshaha guurka waa in lagu caddeeyaa fadhiga golaha heshiiska ee la wada joogo dhawaaq ahaan, oggolaanshuhuna wuxuu imaanayaa weydiinta kaddib isla markiiba.

4. Waa ey bannaan tahay weydiinta guurka qofka maqan in lagu dhammeeyo qoritaan ama qof ka wata wakaalad gaar ah qofka guursanaya.

5. Markii ey suurtoobi weydo in lagu dhawaaqo weydiinta iyo oggolaanshaha guurka waxaa la istacmaalayaa qoridda, haddii taasi ayna suurtoobi karin waxaa la istacmaalayaa astaamo la garan karo.

6. Weydiinta guurku waa ey jireysaa (valido) intii oggolaanshaha la helayo.

Qod. 9aad

Shuruudda markhaatiyaasha

Markhaatiyaasha waa iney ahaadaan qaan-gaar, maskaxdooduna ey fiyowdahay garanayaana in heshiiska loola jeedo guurka.

MADAXA III

DUMARKA EYNA BANNAANEYN IN LA GUURSADO

Qod. 10aad

Dumarka eyna bannaaneyn in la guursado qaraabonima daraadeed

Uma bannaana qofka inuu guursado asalkiisa iyo faraciisa, iyo faraca labadiisa waalid iyo faraca awoowayaashiis iyo ayeeyayaashiis oo ah darajada koowaad.

Qod. 11aad

Kuwa eynan bannaaneyn in la guursado xagga xididnimada

Uma bannaana qofka xididnima daraadeed inuu guursado:
a) Naagta xila u noqotay qof asalkiisa ah;

b) Naagta xila u noqotay qof faraciisa ah;
t) Asalka xilihiisa;
j) Faraca xilihiisa oo ay sugnaatay iney isutageen;
x) Faraca naagta uu la yeeshay xiriir u tegid ah oo ka dhashay he shiis aan sugnaan (contratto non valido).

Qod. 12aad

Kuwa eyna bannaaneyn in la

guursado xagga nuujinta

1. Nuujinta qofka waxay ka reebaysa in uu guursado kuwa looga reebay guurkooda xagga qaraabanimada.

2. Nuujintu reebi meyso guurka haddii ayna sugnaanin in ay caddaatay in ilmaha la nuujiyey caanaha labada sano oo u horeysa noloshiisa eyna nuujintaasi ahayn shan jeer oo kala duwan oo ay mid walba deeqay.

MADAXA IV

GUUR LABAAD

Qod. 13aad

Shuruudda

Uma bannaana qofka in uu guursado naag labaad isagoo aan ka haysan ruqsad qoran Maxkamadda Degmada ee awoodda u leh.

Maxkamadduna ma bixin karto ruqsadaas ayadoo aan hubsan in ay jiraan shuruudaha hoos ku qoran :

1. Markey sugnaatay caddeynta guddiga takhtarada iney naagtu tahay madhasho, taasoo ku xiran inuusan ninku ogeyn guurka ka hor.

2. In ay jirto warqad takhtar oo caddeyneysa in ay naagtu qabto jirro daahday (malattia cronica) ama laysku daaran karo oo aan daawo lahayn.

3. In naagta lagu xukumo muddo ka badan 2 sano oo xarig ah.

4. In ay naagtu guriga ka maqnaato sabab la'aan hal sano.

5. In ay jirto dhibaato la hubsaday oo ka dhalatay deegaan ijtimaaci ah, markaan dambana waxaa kaloo dhiibi kara ruqsadda qof Wasaaradda Garsoorka iyo Arrimaha Diinta idin u siisay arrintaas.

Qod. 14aad

Kuwa kale oo ayna bannaaneyn in la guursado

Ma bannaana in la isugu keeno laba naagood oo qaraabo ka dhaxaysó guur, haddii xiriirka qaraabadu uu keeni lahaa in aynan is geyin haddii midkood ahaan lahayd labood.

MADAXA `V

MAXLALKA, DA'DA LAYSKU GUURSAAN KARO IYO MARKA GUURKA AAN WAXBA KA JIRIN

Qod. 15aad

Sharciga u Bannaaneynaya ninka naagtii uu horey u furay

1. Ma bannaana in uu ninku guursado naag uu horey saddex ku furay, haddii eysan ciddadeedu dhammaan markii uu nin kale guursaday oo uu la gurigalay. Guurkaasuna ahaa mid sharci ah oo madax bannaan (valido e spontaneo).

2. Qofkii ku xadgudba nidaamka kor lagu soo sheegay waxaa lagu qaadaya dembi ey ciqaabtiisu tahay xarig ilaa lix bilood iyo ganaax lacaageed oo ah ilaa 1000 Shilin oo Soomaali ah.

Qod. 16aad

Da'da guurka

Qof kasta waxaa u bannaan si madax bannaan inuu galo heshiis guur markuu gaaro 18 sano.

Gabadha da'deeduna gaarto 16 sano oo aan gaarin 18 sano waxaa u bannaan iney gasho heshiis guur markuu u oggolaado waligeeda.

Garsooraha markii ey noqoto lagama maarmaan waa uu ka dhaafi karaa labada dhinac oo isguursanaya xadkaas.

Qod. 17aad

Oggolaanshaha qofka waliga ah

Haddii uu diido waligu oggolaanshada gabadha la guursanayo oo da'deeduna ey tahay 16 sano oo aan gaarin 18 sano, Garsooruhu ama qof ey Wasaaradda Garsoorka iyo Arrimaha Diinta ey ruqsad u siisay ayaa la wareegaya mas'uuliyaddaas ku saabsan guurka gabadha, wuxuuna tixgelinayaa sida ey gabadhu doorato.

Qod. 18aad

Wakaaladda guurka

Markii la is guursanaayo ninka waa u bannaan tahay in uu wakiil sameysto.

MADAXA VI

WALIGA GUURKA

Qod. 19aad

Waliga

1. Gabadha aan qaan gaarin waxaa guurka wali u noqon kara aabaheed, kaddib hooyadeed, kaddib awoowgeed, kaddib walaalkeeda weyn iyo adeerkeeda.

2. Waxaa shardi ah in waligu u ahaado qof qaan gaar ah maskaxdiisuna ey caafimaad qabto, hufanna.

3. Haddii eynan jirin dadka kor lagu sheegay ama haddii eysan raali ka ahayn in ey mas'uuliyad ka qaadaan guurka ama ey dadkaasu ey jiraan meel 100 Km. ka fog meesha laysku guursanaayo, Garsooruha ama qofka ey Wasaaradda Garsoorka iyo Diinta ey ruqsad u siisay ayaa wali u noqon kara.

Qod. 20aad

Xulidda ama magacaabidda waliga

1. Haddii ey jiraan dad badan oo isku mid ah xagga xigtada naagta, mas'uuliyadda walinimada waxaa qaadaya qofka ey naagtu doorato.

2. Haddii naagtu eysan dooran waligeeda waxaa magacaabaya waligaas garsooraha.

Qod. 21aad

Ka cararka awoodda walinimada

Nin kasta oo guursada gabar aan qaan gaar ahayn, markii uu ula cararay dabadeed meel u jirta 100 Km. meesha laga helo waligeeda iyadoo ulajeedadiisu tahay in uu ka cararo awoodda u leeyahay waliga waxaa lagu ciqaabayaa ganaax u dhaxeeya 200 ilaa 1000 Shilin ama xarig gaaraya 3 bilood haddii falku keeneyn dambi taas ka culus sida uu dhigaayo xeerka ciqaabka.

MADAXA VII

GUURKA JIRA, GUURKA AAN WAXBA KA JIRIN, GUURKA AAN DHAMMEYN, IYO WAXAY KEENI KARAAN

Qod. 22aad

Guurka jira, guurka aan waxba ka jirin iyo guurka aan dhammeyn

1. Guurku wuxuu noqon karaa mid jira iyo mid aan waxba ka jirin iyo mid aan dhammeyn.

2. Guurka jira waxaa weeye kan leh-tiirarka iyo shuruudda lagama maarmaanka ah ee ku soo arooray xeerkaan.

3. Guurka waxba kama jiraan haddii uusan ahayn midka lagu caddeeyey qob. 7aad:

a) Haddii eysan dhammeyn labada dhinac kartidooda (capacità dei contraenti);
b) Haddii guurku uu dhacay marag la'aan.
t) Haddii ey naagtu tahay sida lagu caddeeyey qodobada 9, 10, 11 iyo 13 ee xeerkaan;
j) Haddii ey naagtu ku xiran tahay nin kale ama ey ku jirto ciddadeeda.

4. Guurku wuxuu noqon kara mid aan dhammeyn markii aan la dhawrin shuruudda lagu caddeeyey sharcigaan oo aan lagu tilmaamin qaybtatan ka horeysa.

Qod. 23aad

Waxa ka dhalanaya guurka aan waxba ka jirin iyo kan aan dhammeyn

1. Guurka aan waxba ka jirin ma keeni karo waxyaabaha uu leeyahay guurka jira.

2. Guurka aan dhammeyn wuxuu keeni kara waxyaalaha hoos ku qoran keliya:

a) In carruurta guurka loo nasbeeyo;
b) In aan midkoodna xididka la xarameeyey guursan karin;
t) Iney waajib tahay «ciddada» ka dambeysa marka la kala tago ama geerida.

MADAXA VIII

M E H E R K A

Qod. 24aad

Waajibidda meherka, magacaabidda iyo xadka uu leeyahay

1. Naagta la guursanayo waxay xaq u leedahay sharci ahaan in la siiyo meher.

2. Waa waajib in la magacaabo meherka marka uu guurku dhacaayo.

3. Xadka ugu badan ee uu lahaan karo meherku waa Sh. So. 1.000 ama xoolo la mid ah.

Qod. 25aad

Horumarinta iyo dib u dhiibidda meherka

Waa ey bannaan tahay in la hormariyo ama dib loo bixiyo meherka dhammaantiisa ama qaybtiis ilaa muddo la og yahay.

Qod. 26aad

Dhafidda meherka

Waa ey bannaan tahay naagta la qabo oo qaan gaarka ah ee maskaxdeeduna caafimaad qabto in ey u dhaafto ninkeeda meherkeeda oo dhan ama qayb ka mid ah.

Qod. 27aad

Meherka iyo furidda

Haddii uu ninku naagta furo ayadoo aan guri la isla gelin naagtu waxey xaq u leedahay kala bar meherkeedii ee lagu caddeeyey heshiiska guurka.

MADAXA IX

KHARAJKA GUURKA

Qod. 28aad

Ka qayb galka kharajka guurka

Labada qof ee is qaba way wada qaybsanayaan kharajka guurka iyo wixii kale ee looga baahan yahay guriga ayadoo la tixgelinaayo qof waliba awooddisa dhaqaaleed.

Qod. 29aad

Alaabta ey wada leeyihiin iyo midda u kala gaarka ah

1. Wax allaale wixii alaab ah ee guriga lagu dhisay waxey ka dhaxeeysa qoyska.

2. Haddii heshiiska guurku uu baaba'o alaabta guriga waxaa loo qaybinayaa labada qof oo isqabta si siman.

3. Hase yeeshe, ninka iyo naagta waxey xaq u leeyihiin inay kala haystaan wixii alaab ah ee u kala gaarka ah.

MADAXA X

M A S R U U F

Qod. 30aad

Caddeynta masruufka

Masruufku waxa weeye quudka, marashada, guriga, adeegga, xannaanada carruurta, kharajka daawada yo wax allaale wixii lagama maarmaan ah ee qoyska wanaajinayo.

Qod. 31aad

Waajibka masruufka iyo sida loo gudanaayo

1. Ninka iyo naagta way wada qaybsanayaan kharajka guriga ayadoo la tixgelinayo qof waliba wixii soo gala. Haddii uu midkood uu-

san awood lahayn in uu wax bixiyo kan kale waxaa waajib ku ah inuu bixiyo kharajka guriga oo dhan.

2. Haddii khilaaf ka dhasho labada qof oo isqaba, Garsooruhu waa weydiisan karaa dad waaya-arag u leh arrintaas si uu go'aan uga gaaro.

3. Haddii ninka ama naagta aysan ka soo bixin xilka ka saaran masruufka guriga mid kasta waxaa waajib ku ah inuu qaybtiisa bixiyo haddii uusan awood u lahayn.

4. Haddii midkood dhiibiwaayo qaybtiisa awood la'aanna ayan ahayn waxaa masruufka goynaaya Garsooraha waxaana lagu lahaanayaa qofkii aan dhiibin, kan kalena waxaa u bannaan in uu deyn ku soo qaato intii uu garsooruhu gooyey.

5. Qofka deynka bixiyey wuxuu xaq u leeyahay in uu weydiisto deynta qofka Garsooruhu taas ugu xukumay.

Qod. 32aad

Masruuf ku meel gaar ah

1. Haddii uu ogolaado masruufka laysku haysto iyo shuruuddiisa Garsooruhu wuxuu goyn karaa masruuf ku meel gaar ah oo la siiyo dhinaca dacwada keensaday ilaa iyo intii go'aan dhammad ah laga gaaro arrintaas.

2. Goaankaas waa in si degdeg ah loo fuliyaa.

MADAXA XI

WAAJIB WEEYE IN LA WADA DEGGENAADO

Qod. 33aad

Wada deganaasho

1. Ninka iyo naagtiisa waxaa waajib ku ah iney wada deggenaadaan haddii eysan noqon lagama maarmaan ama ay ku wada heshiyaan si kale.

2. Naagtu waajib bey ku tahay iney raacdo ninkeeda haddii eysan jirin asbaab sharci ah oo is hortaageysa.

QAYBTA II

KALA TEGIDDA IYO ISKU SOO NOQOSHADA KU SAABSAN GUURKA

Qod. 34aad

Hababka kala tegidda

Heshiiska ku saabsan guurka wuxuu ku dhammaan karaa is furida (dhalaaq), ama fasakh ama labada qof midkood oo dhinta.

MADAXA I

FURIDDA

Qod. 35aad

Furidda aan dhammaan iyo tan dhammaatay

Furiddu waa laba nooc:

1. Furid aan dhammaan iyo mid dhammaatay.

2. Furitaanka aan dhammaan ma joojin karo xiriirka guurka ilaa iyo intii ey «ciddadu» dhammaaneyso.

3. Furitaanka dhammaaday isla markii uu dhaco wuxuu joojinayaa xiriirka guurka.

4. Furitaan kasta waa mid aan dhammaan haddii laga reebo markii la is furo ayadoo aan guri la wada gelin ama haddii laysku furo saddex dalaaqood oo midu kaamileyso labadii hore.

Qod. 36aad

Sida laysku furi karo

1. Waxaa awood u leh furitaanka ninka, isagoo ay u ogolaatay Maxkamadda awoodda u leh.

2. Maxkamadda waa ogolaan karta furitaanka kaddib markii ey u bandhigto guddi dhexdhexaadiya oo iyadu ey magacaawday, iyadoo hubsatay in uu guddigu heshiis ka gaari waayey isku keenidda labada qof oo isqaba.

3. Haddii uu guddigu guul ka gaari waayo heshiisiinta labada qof waa inuu arrintaas oo qoran u gubdiyaa Maxkamadda 60 maalmood gudaheed marka laga bilaabo maalinta la magacaabay.

4. Maxkamaddu ma ogolaan karto hal dalqad ka badan markiiba.

Qod. 37aad

Isku soo noqoshada xiriirka guurka

Furitaanka aan dhammaan isla markiiba ma joojin karo xiriirka guurka. Waa bannaan tahay in laysku noqdo ciddada dhexdeeda.

Qod. 38aad

Dhicidda furitaanka aan dhammaan (beynunat sughra)

Mar haddii ay ciddadu dhammaato furitaanka aan dhammaan wuxuu noqonayaa mid dhammaday (baynunat sughra), umana bannaana ninka in uu ku noqdo naagtaas mar labaad, hase yeeshe wuxuu ku soo ceshen kara heshiis cusub oo keli ah.

Qod. 39aad

Furitaanka si cad ku dhammaaday

Furitaanka si cad ku dhammaaday (baynuunat kubra) oo ah saddex dalqadood oo is buuxinaaya wuxu joojinaysa isla markiiba xiriirka guurka, ninkana uma bannaana mar kale in uu ku noqdo naagtiisii hore haddii aan la dhowrin shuruudda lagu caddeeyey qodobka 15aad.

Qod. 40aad

Furitaanka ku saabsan qofka aan hadli karin

Haddii ninka naagta furaya uusan hadli karin, waa in furitaanka lagu caddeeya qoral ama astaamo la garan karo.

Qod. 41aad

Shuruudda furidda

Si uu furitaanka u jiro waxaa lagama maarmaan ah inuu ninku yahay qaangaar, maskaxdiisuna ay caafimaad qabto. Waxba kama jiraan furitaanka qofka waalan ama aan qaangaarin iyo qofkii sharci darro lagu khasbo.

MADAXA II

FASAKHIDDA GUURKA

Qod. 42aad

F a s a kh

1. Fasakh waa baabi'inta heshiiska guurka uu garsooruhu sameeyo.
2. Fasakhu wuxuu keenaysa astaamaha uu leeyahay furitaanka aan dhammaan.

3. Dacwadda ku saabsan fasakha waxey keeneysaa iney ka qaado awoodii furitaanka ee uu ninku lahaa.

Qod. 43aad

Gooraha fasakha

1. Ninka iyo naagta isqaba waxey xaq u leeyihiin inay wevdiistaan inay kala tagaan markii ay jiraan waxyaalaha hoos ku qoran:
   a) Haddii midkood uu qabo cudur aan la daaweyn karin una ogolaan karin wada noolaanshaha ama ey suurtoobi karto iney wada jiogaan hase yeeshe ay ugu jirto dhibaato ay jiradu keeneyso, waxaana shardi ah in qofka doonaya fasakha uu arrintaas ku caddeeyo warqad takhtaceed eyna sugnaatay in uusan ogeyn jiradaas guurka ka hor.
   b) haddii midkood uu maqnaado muddo 4 sanadood ka badan oo isku xigta; hase yeeshe haddii qofkii maqnaa uu soo laabtay intii aan lagu dhawaaqin go'aanka fasakha, weydiisiga fasakhaas la ogolaan maayo.

t) haddii midkood ka caada yeesho in uusan siin kan kale masruuf uu u baahan yahay isagoo awood u leh.

j) haddii labadooduba eysan waxba haysan oo mid kasta uusan awood u lahayn in uu bixiyo masruufka; markaas Garsooruhu waa inuu go'aan ka gaaraa arrintaas lix bilood ka dib markii la keenay arjiga lagu weydiisanayo fasakha.

x) haddii labada qof khilaaf ka dhaco dhexdooda ee ayan suurtoobi karin inay wada noolaadaan. Markaas Maxkamaddu waa inay raacdaa habka lagu caddeeyey qodobka 36.

kh) Ciniinimo ama dhalid la'aan joogta ah oo uu leeyahay midkood.

d) Haddii midkood u ku dhaco xukun muddadiisu ey ka badan tahay afar sano waxaana shardi ah in weydiinta fasakha la keensado kaddib markii qofka la xukumey uu dhammeystay 4 sano oo xarig ah.

2. Naagta la qabo waxaa u bannaan iney weydiisato fasakhidda guurka haddii ninka qabaa uu helo sida uu qabo qodobka 13aad inuu guur cusub galo iyo inaan guurkoodaas ilma ka dhalan.

Qod. 44aad

M a s r u u f

Haddii furitaanka (dalaaq) ama fasakha ay ka yimaadaan gaf uu leeyahy ninku, Garsooruhu waa inuu ninka ku xukumaa inuu siiyo masruuf naagtiisa hore muddo aan ka yareyn 3 bilood aanan ka badnayn hal sano. Haddii uu gafkaasu ka yimaado dhinaca naagta waa in lagu xukuma inay siiso ninkeeda lacag aan ka yareyn meherkeeda.

MADAXA III

GEERIDDA AAN LA HUBIN

Qod. 45aad

Go'aanka ku saabsan geerida aan la hubin

Dhimashada qofka la waayo Garsooraha ayaa go'aan ku gaaraya 4 sano kaddib oo laga billaabayo maalintii la waayey. Hase yeeshe haddii la waayo qof ka mid ah Ciidammada qalabka sida isagoo dagaal ku jira Xoghayaha Dawladda ee Wasaaradda Gaashaandhigga ayaa soo saaraya Dekreeto ku saabsan in uu dhintay 4 sano kaddib markii la waayey. Dekreetadaasu waxey la mid tahay go'aan.

Qod. 46aad

Ciddada ka dambeysa geerida qofka la waayey

Kaddib markii go'aan laga gaaro ama Wasaaradda Gaashaandhiigga ay soo saarto Dekreeto lagu caddeynayo geerida qofka la waayey, naagtiisu waxey tirsaneysaa ciddada geerida oo laga soo billaabayo maaliintii amarka ama dekreetada la soo saaray.

Qod. 47aad

Jebinta iyo isku noqoshada xiriirka guurka

1. Go'aanka ama Dekreetada lagu caddeeyey qodobada hore waxey jebinayaan heshiiska guurka.

2. Haddii qofka la waayey uu soo noqdo ama la ogaado inuu nool yahay intii aynan dhammaan «ciddada», xiriirka guurka isla markiiba waa soo laabanayaa.

3. Go'aanka ku saabsan fasakha wuxuu noqonayaa mid dhammaad ah.

MADAXA IV

C I D D A D A

Qod. 48aad

Waajibidda ciddada

Naagta waxaa waajib ku ah inay dhawrto muddada ciddada marka ey jiraan waxyaalaha hoos ku qoran:

a) fasakha guurka kaddib markii guri laysla galay;
b) furitaanka (dalaaq) aan dhammaan iyo kan dhammaaday ee dhacay kaddib markii laysla guri galay.
t) Geerida ninka ama go'aanka ama Dekreetada ku saabsan dhimashadiisa xataa haddii eysan isla guri galin.

Qod. 49aad

Marka aynan ciddadu waajib ahayn

Ciddadu waajib ma aha haddii la kala tago iyadoo aan laysla guri gelin markii laga reebo xarafka t) ee qodobka 48.

Qod. 50aad

Muddada ey ciddadu socon karto

1. «Ciddada» naagta aan uurka lahayn waa 90 maalmood;

2. Ciddada naagta uurka leh waxey dhammaaneysaa markii ey dhasho ama ey dhiciso.

3. Ciddada naagta ninkeeda uu geeriyooday waa 4 bilood iyo 10 maalmood.

4. Ciddadu waxay billaabaneysaa maalinta lays furo ama uu ninku geeriyoodo ama fasakh dhaco.

Qod. 51aad

Ciddada furidda ama geerida

1. Naagta tirsaneysa ciddada guurka aan dhammaan haddii ninkeedu uu dhinto waxay u guureysa ciddada geerida, ciddadii ey horey u tirsatayna la xisaabin maayo.

2. Naagta tirsaneysa ciddada guurka dhammaaday haddii ninkeedu dhinto waxey dhammeysaneysaa ciddada furidda oo keliya, mana u guureyso midda geerida.

Qod. 52aad

Masruufka soconaya muddada ciddada

Muddada ey soconeyso ciddadu ninka waa inuu siiyaa naagtisa masruuf haddii ey markii horeba waajib ku ahayd inuu siiyo.

BUUGGA II

CARRUURTA IYO MASRUUFKA

Qaybta I

XIGTANIMADA

MADAXA I

XIGTANIMADA AABE

Qod. 53aad

MUDDADA UURKA

Muddada ugu yar uurka waxaa weeye 180 maalmood waxaana ugu badan sanad kaliya oo ah sana-qoraxeed (anno solare).

Qod. 54aad

Aqoonsiga iyo caddeynta aabanimada

1. Marka uu guurka sharciga ku dhisan yahay ilmaha ka farcama ninka naagta qaba waxaa lagu caddeyn kara labada shardi ee hoos ku qoran:

a) in ay dhammatay muddada uurka tan ugu yar oo laga soo bilaabo markii uu dhacay heshiiska guurka.

b) In aan la caddeyn in ey suurtoobin in ey wada kulmin labada isqabta sideedaba oo sabab u ahayd inay jirtay wax kala reebaya marka laga bilaabo waqtiga ey is guursadeen ilaa iyo intii ey ilmuhu dhasheen, ama taasi dhacday kaddib, una socdey 12 bilood oo isku xiriirta. Haddii waxyaalahaas isutagga reebay ey baaba'aan muddada uurka waxaa laga billaabayaa taariikhda ey baaba'een.

2. Haddii la waayo shuruudda kor lagu soo sheegay midkood ilmaha in uu leeyahay ninku, lama caddeyn karo haddii uusan isagu sheegan.

Qod. 55aad

Aabanimada ilmaha muddada ciddada dhexdeeda iyo kaddib

1. Haddii ay naagtu dhasho iyadoo ku jirto ciddada furitaanka aan dhammaan, ilmaha waxaa aaba u ah ninkii furay naagta.

2. Haddii ey naagtu dhasho kaddib markii ciddadeedii noqotay dhammaad sababtoo ah in muddadii dhammaatay ama naagtu ey qiratay iney dhammaatey, aabannimada ilmaha sugnaan meyso, hase yeeshe haddii ilmuhu dhasho 180 maalmood gudahood markii laga bilaabo maalinta ey ciddadu noqotay dhammad; aabanimada ilmaha markaaso kale dhasha wey sugnaaneysa, waxeyna caddeyneysaa in ey isku noqon karaan (rajca) waxaana soconeysa muddada ciddada, haddii uusan ninku caddeyn wax taas khilaafsan.

Qod. 56aad

Aabanimada ilmaha ka dambeysa furitaanka dhammaaday ama ninka geeriyooday

Aabanimada ilmaha waxaa lagu caddeyn kara markay naagta dhasho ayadoo ku jirto ciddadii ay ka tirsaneysay furitaan dhammaaday (baynunat) ama geerida ninkeeda, taas waxaa shardi u ah in ey ilmuhu ku dhashaan 12 bilood gudahooda marka laga bilaabo furitaanka dhammaday ama geerida ninkeeda.

Qod. 57aad

Aabanimada ka dhalatay guurka aan waxba ka jirin

Ilmaha ka dhashay guurka aan waxba ka jirin waaxaa lagu muujin karaa haddii ay naagtu dhasho intii ayna kala tegin ama aan la kala ka xayn lix bilood kaddib iyo 12 bilood dhexdood oo laga billaabó maalintii ey isla guri galeen.

Qod. 58aad

Aabanimada ilmaha aan caddeyn

Aabanimada ilmaha caddaan mayso haddii ay sugnaato si aan shaki ku jirin inuu ninku ciniin yahay (impotente) ama uusan awood u lahayn in uu ilma dhalo, taasoo ey sabab u tahay jirro uu korka ka qabo ama nafsadda (impedimento fisico o patologico).

MADAXA II

ILMAHA KA FARCAMA NAAGTA

Qod. 59aad

Caddeynta hooyanimada ilmaha

Naagtu inay ilmaha hooyo u tahay waxa lagu caddeynayaa isla markii ey dhashaan ayadoo aan lagu xirin wax shuruud ah; taas waxaa ka immaanaya wax allaale wixii ku saabsan dhaqaalahooda iyo barbaarintooda.

MADAXA III

AQOONSIGA AABANIMADA

Qod. 60aad

Aqoonsiga aabanimada

Ninka markuu qirto inuu ilmaha nasabkooda aan la aqoon aabbo u

yahay, xataa haddii taasu dhaqdo asagoo dhimanaya waa sugnaaneysaa aabanimada ilmaha, taasna waxaa shardi u ah in da'da labada qof u dhexeysa la ogolaan karo.

Qod. 61aad

Ogolaanshaha

Aqoonsiga aabanimada ama hooyanimada wuxuu caddeynayaa nasabka ilmaha waxaana taas shardi u ah qofka aqoonsigu dantiisa tahay inuu ogol yahay iyo inay da'da labada qof u dhexeysa la qaadan karo.

MADAXA IV

XANNAANADA ILMAHA AAN QAAN GAARIN

Qod. 62aad

Nuujinta waajibka ah

Hooyada waxaa waajib ku ah inay ilmaheedu nuujiso haddii eysan jirin wax kale ey ku noolaan karaan sabab kasta ha ka timaadee.

Qod 63aad

Xannaanada

Xannaanada ilmaha waxaa weeye in si wanaagsan loo rabbeeyo, waxna la baro iyo in la abuuro asluubtooda wanaagsan ayadoo aan laga hortageyn awoodda gaarka ah ee uu leeyahay waligiisu.

Qod. 64aad

Qofka u qalmi kara xannaanada ilmaha

1. Xannaanada laboodka waxay soconeysa ilaa iyo 10 sano tan dheddiga ahna ilaa iyo 15 sanadood, wexayna waajib ku tahay hooyada. Haddii hooyada ey nin kale guursato wey bannaan tahay in xannaanadii ilmaha sii wado, hase yeeshe taas waxey ku xiran tahay ogolaanshaha Aabaha.

2. Haddii ey habartu geeriyooto ama ay jiraan wax sharci ahaan ka reebaya xannaanada ilmaha, xannaanada ilmaha wexey u gudbeysaa aabaha ma qof xigto u ah.

3. Haddii eysan jirin dadka kor lagu sheegay ama eysan u qalmin in ay xannaaneeyaan limaha, Garsooruhu waa u bannaan tahay inuu u dhiibo xannaanada ilmaha qof kale isagoo tixgelinaya danta ilmaha la xannaaneynayo, ama qof oo xigta u ah.

4. Waa u bannaan tahay Garsooraha xannaanada ilmaha inuu u celiyo mar labaad hooyada ama qof kasta oo xigta u ah haddii ey sugnaatay in la waayo wixii awal ka hor istaagayey.

Qod. 65aad

Shuruudda looga baahan yahay xannaaneeyaha

Qofka ilmaha xannaaneya waxaa looga baahan yahay inuu yahay qaangaar, maskaxdiisuna caafimaad qabto, waana inuu daryeelaya danta ilmaha.

Qod. 66aad

Xulidda xannaaneeyaha

Haddii ay badan yihiin dadka xaq u leh xannaanada ilmaha, ayna yihiin xigto isku daraja ah, Garsooruhu wuxuu ka dhex dooranayaa kan ilmaha dani ugu jirto, hase yeeshe haddii ey isla eg yihiin waxaa la hormarinayaa kan aan waxba qaadaneyn.

Qod. 67aad

Guurka xannaaneeyaha

Haddii naagta wax xannaaneyneysa ay guursato qof xigta aan u ahayn ilmaha aan qaan gaarin, xaqeeda xannaanada waa waayeesaa.

Qaraarkaas la raacimaayo haddii xannaaneeyahu yahay hooyo laga dhintay.

Qod. 68aad

Xaqa xannaanada aan dhici karin

Xaqa xannaanadu ma dhiçi karo, hase yeeshe wuxuu ku dhammaan karaa muddada xannaanada oo dhammaato.

Qod. 69aad

Dhammaanshada muddada xannaanada

1. Xaqa xannaanadu wuxuu ku eg yahay wiilku markii uu gaaro 10 sano, gabadhuna gaarto 15 sano.
2. Garsooraha waa u ogolaan karaa in muddada xannaanada wiilka ama gabadha laga badiyo xadka la sheegay, haddii uu garto ineyna gaar ahaan u maamuli karin arrintooda.
3. Xannaanadu waxey ku ekaaneysaa marka uu ilmuhu gaaro 18 sannadood.

Qod 70aad

Kordhinta muddada xannaanada

Haddii qofka la xannaaneynayo, ha ahaado lab ama dheddig, uu dhammeysto muddada xannaanada isagoo jiran ama nacas ah ama waalan waxaa u qalma iney xannaaneyso oo ey hayso hooyadiis xataa haddii uu dhaafo da'da lagu qaan gaaro. Haddii eysan jirin hooyo, Garsooruhu wuxuu ilmaha u dhiibi karaa qofka uu garto inuu u qalmo awoodna u leh inuu xannaaneyo ilmaha.

Qod. 71aad

La dhoofidda ilmaha

1. Qofka ilmaha xannaaneynaya uma bannaana inuu dibedda ugala baxo ilmaha Jamhuuriyadda haddii uusan ogolaan waligu.
2. Haddii ey is qabtaan qofka ilmaha xannaaneynaya iyo qofka waliga ah go'aanka waxaa leh garsooraha.

Qod. 72aad

Xaga aragtida ilmaha

Haddii ilmaha uu la nool yahay labada waalid midkood, waalidka uu la nool yahay uma diidi karo kan kale inuu arko ilmihiisa ama haysan karo muddo gaaban. Xaqa aragtida waxaa iska leh waalidka keliya.

Haddii taas leysku af garan waayo, waxaa go'aanka isla leh garsooraha.

Qod. 73aad

Joojinta xaqa xannaanada

Xaqa uu leeyahay waalidku inuu ku arko ilmaha xoog laguma fulin karo, hase yeeshe haddii waalidka ilmaha xannaaneynaya uu diido inuu arko kan kale ilmaha, Garsooraha waxaa u bannaan inuu xannaanada ka joojiyo waalidka diiday aragtida muddo aan ka badneyn hal bil.

QAYBTA II

Masruuf

Qod. 74aad

Xigtada xaqa u leh masruufka

Xigtada xaq uma leh masruuf haddii laga reebo asalka iyo faraca (ascendenti e discendenti).

Qod. 75aad

Masruufka ilmaha

1. Haddii ilmaha uusan lahayn xoolo nafaqadiisu waxey waajib ku tahay waalidkiisa wax haysta.

2. Masruufka ilmaha ey waalidka waajib ku tahay wuxuu soconayaa :

   a) Gabadha ilaa iyo intii ey ka guursato ama iyadoo qaan gaar ah ey ka hesho shaqo ey ku noolaato.

   b) Wiilkana ilaa iyo intii uu gaaro 18 sano.

3. Haddii wiilku uu gaaro 18 sano asagoo aan awood u lahayn in uu shaqeeyo jirro daraadeed ama ey tahay inuu waxbarashadiisa sii wato masruufkiisa waxaa bixinayaa waalidiintiisa.

4. Waqtiga uu soconayo masruufka carruurta waa inay u hogga-ansanaadaan waalidiintooda.

5. Haddii uu dhammaado heshiiska guurku — sabab kasta ha ahaatee — masruufka carruurta wuxuu ku soconayaa sida qodobada 31 iyo 32 ee xeerkan ka mid ah.

Qod. 76aad

Masruufka waalidjinta

1. Wiilka ama gabadha wax haysta waxaa waajib ku ah iney masruufaan waalidkood haddii waalidku awood u lahayn iney is masruufaan.

2. Haddii carruurta ey badan yihiin way ka wada qayb galayaan masruufka waalidkooda ayadoo la tixgelinaayo qof walba wixii soo gala.

Qod. 77aad

Xuquuqda iyo waajibaadka qofka aan waxba haysan

1. Qofka wax haysta oo ey waajib ku tahay inuu bixiyo masruuf, bixiyo, waa qof aan haysan maal qiimihiisu ka badan yahay waxa lagama maarmaanka ah ee markaas sharci ahaan uu u baahan yahay sida caadadu tahay iyo waxay u baahan yihiin carruurtiisa iyo bixinta deynka muddadiisu dhammaatay iyo kan muddadiisu soo socoto ama usan lahayn xirfad wax ka soo galaan ama meel kale oo waxa ka soo gala ey ku filan yihiin sida kor lagu soo sheegay.

2. Qofka aan waxba haysan ee xaq u leh in la masruufo, waa kii aan heli karin waxyaalaha lagama maarmaanka ah ee uu u baahan yahay ama aan heli karin wax ku filan ee uu ku noolaado.

Qod. 78aad

Xuquuqda iyo waajibaadka qofka wax haysta

1. Qofka wax haysta oo ey waajib ku tahay inuu bixiyo masruuf, waa qofka haysta maal qiimahiisu ka badan yahay waxyaalaha lagama maarmaanka ah ee markaas sharci ahaan uu u baahan yahay sida caadadu tahay iyo waxey u baahan yihiin carruurtiisa iyo bixinta deynka muddadiisu dhammaatey iyo kan muddadiisu soo socoto ama leh xirfad wax ka soo galaan ama meel kale oo waxa soo gala ey ka badan yihiin waxyaalaha kor lagu soo sheegay.

2. Lama oran karo maal siyaada ah waxyaalaha loo baahan yahay ee kor lagu soo sheegay ee ah xoolaha ma guurtada ah (beni immobili) ama hanti (capitale) uu ka helo waxa uu ku noolaan karo qofka wax haysta, ama guri qiimahiisu ama ballaciisu eyna ka badneyn hoyga isaga iyo carruurtiisa.

Qod. 79aad

Kala hormarinta mudashada masruufka

1. Haddii dadka muteystay masruufka ay ka badan yihiin hal qof oo qofka ay waajib ku tahay uusan awood u lahayn inuu masruufo dhammaantood waxaa la hormarinayaa xaaska, carruurta kaddibna waalidka.

2. Haddii dadka ey waajibka ku tahay ey ka badan yihiin hal qof oo dhammaantooda ey awood u leeyihiin iney bixiyaan, qof kasta oo ayaga ka mid ah wuxuu bixinayaa qaybtiisa asagoo siinaya dadka muteystay.

3. Haddii dhammaantood eysan awood u lahayn iney bixiyaan qaybaha masruufka oo dhan waxaa la raacayaa sida lagu sheegay qaybta 1aad ee Qodobkan.

Qod. 80aad

Billawga masruufka iyo dhammaadkiisa

Masruufka wuxuu bilaabmayaa maalinta uu qofka muteystay, wuxuuna noqonayaa deyn, mana dhammaanayo haddii aan la gudin ama la dhaafin.

Qod. 81aad

Isku gudid

Ma bannaana in laysku gudo masruufka wiilku uu ka mutaystay aabihiis iyo dayn aabuhu uu ku leeyahay hooyada ilmaheeda nuujineysaa.

BUUGGA III

WILAAYADDA, DARDAARANKA IYO WAKAALADA

QAYBTA I

Wilaayadda

Qod. 82aad

Waliga

Wilaayadda qofka aan qaan gaarin iyo xoolihiisa waxaa iska leh aabahiisa, hooyadiisa kaddibna awoowgiisa kaddibna qofkii midkood ka dardaarmay.

Qod. 83aad

Waajibaadka waliga

Waliga wuxuu mas'uul ka yahay ilaalinta maalka ilmaha aan qaan gaarin iyo maamulkooda iyo xannaanadooda, iyadoo la dhawrayo sida uu dhigayo sharcigan.

Qod. 84aad

Laguma deeqi karo xoolaha uu leeyahay ilmaha aan qaan gaarin

Ma bannaana in deeq loo bixiyo xoolaha ilmaha aan qaan gaarin iyo wixii ka soo baxa, haddii wax ka mid ah xoolahaas qof deeq u bixiyo waxba kama jiraan, waxaana mas'uul ka ah qofka deeqdaas bixiyey.

Qod. 85aad

Isticmaalka Xoolaha ilmaha aan qaan gaarin

Uma bannaana qofka waliga u ah ilmaha aan qaan gaarin inuu ka faa'iideystò maalka ilmaha ama uga faa'ideeyo xaaskiisa ama xigtadooda, haddii uusan ruqsad ka haysan Maxkamadda sidoo kale uma bannaana inuu rahmad ku bixiyo deyn lagu leeyahay daraadeed xoolaha ma guurtada ah ee uu leeyahay ilmaha aan qaan gaarin.

Qod. 86aad

Looma bixin karo amaah xoolaha uu leeyahay ilmaha aan qaan gaarin

Uma bannaana qofka ilmaha aan qaan gaarin waliga u ah inuu amaahsado ama amaah ku bixiyo xoolaha ilmaha haddii uusan ruqsad ka haysan Maxkamadda.

Qod. 87aad

Dhammaansho wilaayadda

Wilaayadda ilmaha aan qaan gaarin waxey dhammaneysa marka uu ilmahaasu u qaan gaaro, haddii eysan Maxkamaddu goyn in la sii wado wilaayadda.

Qod. 88aad

Ka qaadista ama dhimidda loo yeeli karo wilaayadda

Haddii xoolaha uu leeyahay ilmaha aan qaan gaarin ey khatar ku jiraan ayado waliga u ah si xun u maamulay ama ey jiraan sabab kale, Maxkamadda way u bannaan tahay in ay ka qaado ama ay dhitno wilaayadda.

Qod. 89aad

Soo celinta xoolaha uu leeyahay ilmaha aan qaan gaarin

Qofka ilmaha waliga u ah ama dadka isaga dhaxlay waa inay u soo celiyaan ilmaha aan qaan gaarin xoolihiisa markii uu qaan gaar noqdo qiimaha ey xoolahaasu lahaayeen wixii ay lunsadeen oo xoolaha ka mid ah iyagaana mas'uul ka ah celintooda, waxaana laga soo bilaabayaa markii la lunsaday.

QAYBTA IIaad

DARDAARANKA IYO WAKAALADDA

MADAXA IAAD

Daneeyaha ilmaha aan qaan gaarin

Qod. 90aad

Waxyaalaha looga baahan yahay Daneeyaha

Daneeyaha ilmaha aan qaan gaarin looga dardaarmay waa inuu ahaada qof daacad ah, uuna leeyahay awood buuxda sharci ahaan, una qalmo hawsha loo dhiibayo, gaar ahaan looma magacaabi karo daneeyey qofka haddii :

a) lagu xukumay dambi culus;
b) loo yaqaano in ay asluubtiisu xuntahay ama uu yahay qof aan haysan wuxuu ku noolaado.
t) qofka hadda ka hor laga qaaday wilaayadda ama loo diiday danaynta ilmaha aan qaan gaarin.

j) qofka ey ka dhaxeyso dacwad Maxkamadeed isaga, asalkiisa, faraciisa xaaskiisa iyo ilmaha aan qaan gaarin; ama ey cadaawad ka dhaxeyso isaga iyo ilmaha aan qaan gaarin, marka ay jiraan asbaab looga baqayo inay wax u dhimaan danta ilmaha aan qaan gaarin.

Qod. 91aad

Magacaabidda daneeyaha

Aabaha ilmaha aan qaan gaarin iyo awoowaha waxaa u bannaan in ey doortaan Daneeye (wasi), markey doonaan way ka noqon karaan magacaabidda.
Magacaabidda danneeyaha Maxakamaddu waa in ay ogolaataa.

Qod. 92aad

Markii ay Maxkamaddu magacaabi karto danneeyaha

Haddii aan loo magacaabin danneeye ilmaha aan qaan gaarin, Maxkamadda ayaa magacaabaysa.

Qod. 93aad

Magacaabidda daneeyayaasha

1. Haddii loo baahdo waa bannaan tahay in la magacaabo Daneeyayaal ka badan hal, markaaso kalena wadajir ayey u shaqeenayaan, midkoodna gooni ugama bixi karo.

2. Haddii isafgaranwaa ka dhex dhaco daneenayaasha dhexdooda Maxkamadda ayaa arrintaas go'aan ka gaaraysa.

Qod. 94aad

Waajibaadka daneeyaha

Daneeyaha waa inay gacantiisa soo galaan xoolaha uu leeyahay ilmaha aan qaan gaarin si uu u maamulo una ilaaliyo, waxaana waajib ku ah inuu u dadaalo sida laga rabay qofka wakiilka ah ee abaalgudka qaata.

Qod. 95aad

Wax yaalaha ka reeban iyo xadka ey leedahay hawsha daneeyaha

Daneeyaha uma banaana in uu ku kaco waxyaalaha hoos ku qoran haddii uusan ka haysan ruqsad.Maxkamadda :

a) inuu ku isticmaalo maalka maguurtada ah ee uu leeyahay ilmaha aan qaan gaarin ama inuu u dhigo rahmad.
b) inuu ku isticmaalo maalka guuraanka ah ama lacag cad ayadoo laga reebayo intii looga baahan yahay sidii loo maamuli lahaa hawsha xoolahaas.
t) inuu amaah u qaato ama uu amaah u bixiyo lacagta uu leeyahay ilmaha aan qaan gaarin.

j) inuu ijaaro maalka ma guuraanka ah ee uu leeyahay ilmaha aan qaan gaarin muddo ka badan saddex sanadood haddii eysan ilmaha faa'iido ugu jirin.

x) inuu ijaaro maalka ma guuraanka ah ee uu leeyhay ilmaha aan qaan gaarin muddo sannad ka badan marka laga bilaabo maalinta uu qaan gaaro ilmahaasi.

kh) inuu ka tago xaquuqda iyo dacwooyinka iyo inuu ogolaado go'aano laga qaadan karo rafcaan ayadoo ey jiraan asbaab macquul ah ama uu dhaafo rafcaan markuu uu qaatay ka dib.

d) inuu ijaarto xoolaha uu leeyahay ilmaha aan qaan gaarin isago ka faa'iideysanayaa ama uu uga faa'iideynayo xaaskiisa ama dadka kale oo xigaladooda ah ama qof daneeyuhu uu wakiil u yahay.

Qod. 96aad

Haynta lacagta cad

Daneeyuhu waa inuu ku dhigaa magaca ilmaha aan qaan gaarin khasnad ay Maxkamadu leedahay ama Bankiga ay Maxkamaddu magacawdo lacagta oo dhan ee ilmahu leeyahay oo gacantiisa soo gasha isagoo ka reebaya intii looga baahan yahay masruufka iyo intii ey maxkamaddu u maleyneyso in lagu maamuli karo xoolaha. Waxyaalaha kor lagu sheegay waa in lagu dhammeeyaa 15 maalmood gudahooda marka laga bilaabo maalinta lacagta la qabto, danneeyaha uma bannaana in uu ka qaato lacagtaas meesha la dhigay haddii uusan ruqsad ka haysan Maxakamadda.

Qod. 97aad

Xisaabaha maamulka

Daneeyaha waa inuu Maxkamadda awoodda u leh u geeyaa xisaabaha maamulka iyo warqahooda muddo aan ka dambeyn 31da Disember sannad walba.

Qod. 98aad

Mushaarka Daneeyaha

Danneeyuhu xaq uma leh mushaaharo, hase yeeshe Maxkamaddu ayadoo tixgelinaysa weydiiskiisa way u qori karta mushahar ama in la siiyo abaalgud shaqo gaar ah daraadeed.

Qod. 99aad

Dhammaadka Xilka Danneeyaha

Xilka danneeyuhu waxuu dhamaanayaa :

a) markii uu ilmuhu qaangaaro, haddii Maxkamadu eysan go'aan ka gaarin inuu daneeyuhu hawshiisa sii wado.

b) haddii hawsha laga qaado ama la ogolaado tasilaadiisa.

j) markaa uu waayo awoodda waddisa (capacita' di agire) ama

la ogaaday inuu maqan yahay ama uu geeriyooday.

x) ama ilmuhu uu dhinto.

Qodoka 100aad

Ka qaadista xilka la saaray danneeyaha

Danneeyaha waxaa laga qaadi kara xilka la saaray markii ay jiraan waxyaalaha hoos ku qoran :

a) haddii ay jiraan asbaabaha laga reebay oo lagu caddeeyey qodobka 90aad ee sharciga xataa haddii ay jirtay asbaabtaasi waqtigii la magacaabay;

b) haddii uu danneeyuhu si xun u maamulo ama uusan daneeyn xoolaha ilmahu leeyahay ama hayntiisa xilka la saaray ey dhibaato u keenayso danta ilmaha.

Qod. 101aad

Dhibista Xoolaha

Daneeyuhu waa inuu 30 maalmood gudahooda marka laga bilaabo maalinta xilka la saaray ku egyahay, u dhibaa Maxkamadda awooda u leh maalka uu leeyahay ilmaha aan qaangaarin ee uu hayo.

Qod. 102aad

Dhiibidda xoolaha ilmaha aan qaangaarin xagga dadka dhaxlaayo daneeyaha iyo wakiilkiisa

Haddii danneeyuhu uu geeriyoodo ama uu waayo awoodda caqliga ama la ogaaday inuu maqan yahay, dadka isaga dhaxal ku leh ama wakiil u ah waa in ay xoolaha ilmaha aan qaan gaarin u dhiibaan Maxkamadda awoodda u leh.

MADAXA IIAAD

DANEEYAHA QOFKA AY WAX U DHIMAN YIHIIN

Qod. 103aad

Haynta qofka ay wax u dhiman yihiin iyo magacaabidda daneeyaha

1. Qofka qaan gaaray oo la ogaaday inuu waalan yahay ama wax u dhiman yihiin waxaa go'aan lagu gaaraya hayntiisa maalinta la ogaaday in ay jirto in ey wax u dhiman yihiin; sidaasoo kale waxaa go'aan lagu gaaraya in la hayo qofka la ogaaday inuu yahay nacas ama isdhaafsan yahay, (fatuita stoltezza). Haynta dadaka kor lagu soo sheegay waxaa ka qaadi kara Maxkamadda awoodda u leh.

2. Maxkamadda ayaa magacaabaysa maamulaha xoolaha qofka ay tahay in la hayo, maamulida xoolaha qofka ay wax u dhiman yihiin waxaa loogu dhaqmayaa sida ku qoran Nidaamka danaynta ilmaha aan qaan gaarin.

Qod. 104aad

Kharajka daaweynta qofka wax u dhiman yihiin

Kharajka loo baahan yahay in lagu daaweeyo qofka ay wax u dhiman yihiin wuu ka horeynayaa kharaj kasta oo kale.

Qod. 105aad

Ilaaliyaha qofka ey wax u dhiman yihiin

Ilaalinta qofka ey wax u dhiman yihiin waxaa ugu horeynaya aabihiis waxaana ku xiggaya awowgiis, ka dibna qofka ey Maxkamaddu u doorato.

MADAXA IIIAAD

WAKAALADDA QOFKA MAQAN AMA KAN LA WAAYO

Qod. 106aad

Qofka Maqan

Maxkamadda qofka maqan waxey u magacaabeysaa wakiil markii ey ka soo wareegato maqnaashadiisa hal sano ama ka badan eyna caddaato in ey u keeneyso dhibaato danahiisa, markaan hoos ku qoran :

a) Haddii la waayey oo aan la ogeyn inuu nool yahay ma uu dhintay;

b) Haddii uusan lahayn meel uu deggan yahay ama guri la yaqaanno ama meesha uu degan yahay iyo gurigiisaba ey ka baxsan yihiin Jamhuuriyadda Dimoqraadiga ah ee Soomaliyeed, oo eysan u suurtoobi karin inuu isagu maamulo xoolihiisa ama ilaaliyo qofka uu u wakiishay inuu maamulo xoolahiisa.

Qod. 107aad

Oggolaanshaha Wakiilka

Haddii qofka maqan uu dhaafay wakiil guud Maxkamadda ayaa go'aan ka gaaraysa inay ogolaato markii ey ogaato inay jiraan shuruuda looga baahan yahay daneeyaha, haddii kale iyadaa magacaabaysa qof kale.

Qod. 108aad

Dhammaanshaha maqnaashada

Maqnaashadu way dhammaanaysaa markii ey dhammaato sababtii keentay ama la ogaado inuu qofka maqan dhintay ama go'aan ama dekreeto ka soo baxday meel awood u leh.

Qod. 109aad

Nidaamka lagula dhaqmayo wakaaladda qofka maqan

Wakaaladda qofka maqan waxaa lagula dhaqmayaa nidaamka u dhigan daneynta ilmaha aan qaan gaarin.

QAYBTA IIIAAD

ILMAHA LA KORSADO

Qodobka 110aad

Shuruudda looga baahan yahay

Way u bannaan tahay dad Soomaaliyeed ama dad kale oo deggan dalka si joogta ah ee qaan gaar ah in ay korsadaan carruurta aan waalidkooda la aqoon.

Filka u dhaxeeya qofka wax korsanaya iyo kan la korinayo waa in uusan ka yaraan kan u dhaxeeya aabaha iyo wiilkiisa.

Way bannaan tahay in la korsado carruurta waalidkood la yaqaanno iyagoo wadanaaya magacii aabahood.

Qod. 111aad

Habka Korsashada

Qofka doonaayo inuu korsado qof kale oo laga helo shuruudda qodobka kor lagu soo caddeeyey waa inuu arji u qortaa Garsooraha Maxkamadda Degmadda laga helo qofkaas isagoo muujinayo in uusan ka noqoneyn korsashada, sugayana inuu awood dhaqaale u leeyahay barbaarinta ilmaha.

Qod. 112aad

Tillaabada Garsooraha

Garsooruhu kaddib markii uu fiiriyo arjiga korsashada iyo wixii la xariira, iyo kaddib markii uu dhageysto qofka la doonayo in la korsado wuxuu go'aan ka gaarayaa ogolaanshaha ama diidista korsashada. Go'aankaas waxaa la qaadanayaa kaddib markii la dhageysto ra'yiga Xeer Ilaaliyaha Guud ee raacistiisu eyna wajib ahayn.

Qod. 113aad

Gudbinta go'aanka Korsashada

Markii la ogolaado arjiga korsashada waxaa loo dirayaa Xafiiska Arrimaha Madaniga (Ufficio di Stato Civile) ee Dawladda Hoose, waana in lagu qoraa warqadda dhalashada qofka wax korsanayo iyo kan la korsanayo, waxaana taasu dhalineysa in magaca qofka la korsanayo la raaciyo kan korsanayo.

Qod. 114aad

Waxyaalaha ey keeni karto korsashadu

Korsashada waxey ka dhex dhalineysaa qofka wax korinaya iyo kan la korinayo xiriir la mid ah kan ka dhasha is dhalidda. Haddii qofka wax korsanaya uu leeyahay ilma kale, kan la korsanayo wuxuu la siman yahay ilmaha kale, wuxuuna la wadaagayaa wixii xuquuq iyo waajibaad ah oo uu leeyahay aabaha ilmaha korsanayo.

Qod. 115aad

Kormeeridda ilmaha aan qaan gaarin

Kormeeridda dhaqaaleynta ilmaha aan qaan gaarka ahayn ee la korinayo waxaa iska leh Xeer Ilaaliyaha Guud iyo Garsooraha loo dardaarmay.

Qod. 116aad

Mararka eysan caadiga ahayn

Markii eysan caadi ahayn oo ka baxsan Xeerkaan wey bannaan tahay in go'aanka korsashada uu ka soo baxo Madaxweynaha Golaha Sare ee Kacaanka.

BUUGGA IV

DHAXALKA LAGU CADDEEYO DARDAARANKA

QAYBTA I

Dardaaranka

MADAXA I

Caddeynta iyo Shuruudda looga baahan yahay dardaaranka

Qod. 117aad

Caddeyn

Dardaaranku waxaa weeye sidii loo geli lahaa xoolaha qofka kaddib markuu geeriyoodo.

Qod. 118aad

Qaabka dardaaranka

Dardaaranka waxaa lagu muujin karaa hadal ama qoraal ayadoo la muujinayo ujeedada laga leeyahay. Haddii qofka dardaarmayaa uu yahay qof aan hadli karin ama uusan wax qori karin dardaaranka waxaa lagu muujin karaa tilmaamo la garan karo.

Qod. 119aad

Shuruudda dardaaranka

Si uu dardaaranku u noqdo mid sharci ku dhisan, waxaa loo baahan yahay inaan qofka dardaaranka lagu khasbin, ama ulajeeda loo sameyey eysan ka hor imaaneyn sharciga. Haddii qofka dardaarmayaa uusan ahayn muslin, waa bannaan yahay dardaarankiisu, waxaana shardi ah in uusan ka soo hor jeedin sharciguusa iyo nidaamka guud.

Qod. 120aad

Dardaaran shuruud ku xiran

1. Ayadoo la tixgalinayo nidaamka lagu caddeeyey qodobka hore dardaaranka ku xiran shardi ama la xiriira waa bannaan yahay. Haddii

QAYBTA IIIAAD

ILMAHA LA KORSADO

Qodobka 110aad

Shuruudda looga baahan yahay

Way u bannaan tahay dad Soomaaliyeed ama dad kale oo deggan dalka si joogta ah ee qaan gaar ah in ay korsadaan carruurta aan waalidkooda la aqoon.

Filka u dhaxeeya qofka wax korsanaya iyo kan la korinayo waa in uusan ka yaraan kan u dhaxeeya aabaha iyo wiilkiisa.

Way bannaan tahay in la korsado carruurta waalidkood la yaqaanno iyagoo wadanaaya magacii aabahood.

Qod. 111aad

Habka Korsashada

Qofka doonaayo inuu korsado qof kale oo laga helo shuruudda qodobka kor lagu soo caddeeyey waa inuu arji u qortaa Garsooraha Maxkamadda Degmadda laga helo qofkaas isagoo muujinayo in uusan ka noqoneyn korsashada, sugayana inuu awood dhaqaale u leeyahay barbaarinta ilmaha.

Qod. 112aad

Tillaabada Garsooraha

Garsooruhu kaddib markii uu fiiriyo arjiga korsashada iyo wixii la xariira, iyo kaddib markii uu dhageysto qofka la doonayo in la korsado wuxuu go'aan ka gaarayaa ogolaanshaha ama diidista korsashada. Go'aankaas waxaa la qaadanayaa kaddib markii la dhageysto ra'yiga Xeer Ilaaliyaha Guud ee raacistiisu eyna wajib ahayn.

Qod. 113aad

Gudbinta go'aanka Korsashada

Markii la ogolaado arjiga korsashada waxaa loo dirayaa Xafiiska Arrimaha Madaniga (Ufficio di Stato Civile) ee Dawladda Hoose, waana in lagu qoraa warqadda dhalashada qofka wax korsanayo iyo kan la korsanayo, waxaana taasu dhalineysa in magaca qofka la korsanayo la raaciyo kan korsanayo.

Qod. 114aad

Waxyaalaha ey keeni karto korsashadu

Korsashada waxey ka dhex dhalineysaa qofka wax korinaya iyo kan la korinayo xiriir la mid ah kan ka dhasha is dhalidda. Haddii qofka wax korsanaya uu leeyahay ilma kale, kan la korsanayo wuxuu la siman yahay ilmaha kale, wuxuuna la wadaagayaa wixii xuquuq iyo waajibaad ah oo uu leeyahay aabaha ilmaha korsanayo.

shardiga uu bannaan yahay waa in la dhawraa ilaa iyo intii ey jirto dan-ta laga leeyahay.

Shardiga lama dhawrayo, haddii uusan bannaneyn ama eysan jirin dan sharcigu ka leeyahay.

2. Shardiga bannaan waxaa weeye mid dan ugu jirto qofka dar-daarmaya ama qofka loo dardaarmayo ama kuwa kale, oo aan ahayn mid la reebay ama aan ka hor jeedin sharciga.

Qod. 121aad

Waxyaalaha looga baahan yahay qofka dardaarmaya

Qofka dardaarmaya waa inuu ahaado qaan gaar, maskaxdiisuna fi-yowdahay, waxna garan karo xataa haddii uu yahay qof la ilaalinaayo oo ah nacas ama isdhaafsan (safah iyo qaflah).

Waa bannaan yahay dardaaranka qofka diinta ka baxay, waxaase shardi ah inuu Diinta Islaamka ku soo noqdo haddii kale dardaaranka waxba kama jiraan.

Qod. 122aad

Shuruudda looga baahan yahay qofka loo dardaarmayo

1. Qofka wax looga dardaarmayo waxaa looga baahan yahay shu-ruudda hoos ku qoran:

a) inuu yahay qof la yaqaanno;

b) inuu yahay qof awood u leh inuu xoolo yeesho;

t) inuu nool yahay markii la dardaarmayey, haddii la maga-caabay.

2. Haddii aan la magacaabin shardi ma aha inuu nool yahay mar-kii la dardaarmayey ama markii uu dhimanayo qofka dardaarmayey.

Qod. 123aad

Dardaaran Sadaqo ah

Waa ay bannaan tahay in loo dardaarmo meelaha illaahay lagu caa-budo, jimciyadaha aan dan gaar ah lahayn (Istituti di Benificenza) ama kuwa kale oo wixii wanaagsan ka shaqeeya (Organisazioni di Carita) ama ku saabsan baarista cilmiga, waxaana shardi u ah in aanay ka hor imaanayn mabaadi'da Shareecada Islaamka.

Wixii laga dardaarmo waxaa lagu bixinayaa dhismaha meelaha looga dardaarmay iyo dadka aan wax haysan iyo wixii kale oo la xiriira sha-qada meelahaas haddii Xeerka (Consuetudine) ama aan lagu caddeyn dardaaranka si kale. Way bannaan tahay in loo dardaarmo Illaahay dar-tiis iyo sadaqa ahaan iyadoo aan la caddeyn meel gooni ah oo lagu bixi-nayo, markaasna waxaa loo bixinayaa wixii wanaagsan oo dhan.

Qod. 124aad

Shuruudda waxa laga dardaarmayo

Maalka laga dardaarmayo waxaa looga baahan yahay shuruudda hoos ku qoran:

a) Inuu yahay maal la wareejin karo lana dhaxli karo, eyna bannaan tahay in lagu sameyn karo Heshiis.

b) Inuu yahay wax lagu intifaaci karo.

t) Inuu yahay wax jirey markii la sameeyey dardaaranka, uuna lahaa qofka dardaarmaya haddii si cad loo magacaabo.

Qod. 125aad

Dardaaranka ku saabsan qayb go'an

Way bannaan tahay in loo dardaarmo qofka qayb go'an ee maalka ka mid ah. Haddii qaybtaas go'ani ey ka badan tahay saddex meelood meel ka mid ah xoolaha laga tagey lama fulinayo haddii eysan ogolaan dadka wax dhaxlaya.

Qod. 126aad

Buritaanka dardaaranka qofka waalan

Waxba kama jiraan dardaaranka qofka waalan haddii waalidiisu ey soconeyso ilaa iyo intii uu ka dhinto, sidaasoo kale waxba kama jiraan dardaaranka qofka wax loi dardaarmayo haddii uu ka hor dhinto kan dardaarmaya.

Qod. 127aad

Dardaaranka waxba kama jiraan haddii waxa laga dardaamayaa ey lumaan

Waxba kama jiraan dardaaranka haddii xoolaha laga dardaarmayo ee go'an ay baaba'aan intii qofka looga dardaarmay uusan helin ka hor.

Qod. 128aad

Dardaaranka qofka nacaska ah ama isdhaafsan

Waa bannaan yahay dardaaranka uu sameeyo qofka la ilaalinaayo sababtoo ah in uu yahay nacas ma isdhaafsan yahay.

Qod. 129aad

Dilidda qofka dardaarmaya

Haddii qofka loo dardaarmaya isagoo maskaxdiisu fiyoowdahay uu ikhtiyaarkii u dilo qofka dardaarmaya waa loo diidayaa in uu qaato waxa loo dardaarmay.

MADAXA II AAD

Ka noqoshada, Ogolaanshaha iyo diidista ku sababsan dardaaranka

Qod. 130aad

Ka noqoshada Dardaaranka

Qofka dardaarmayaa waa uu ka noqon karaa dardaarankiisa oo dhan ama qayb ka mid ah si cad ama la sii garan karo.

Waxaa loo qaadanayaa ka noqoshada dardaaranka tilaabo kasta oo la qaado, laguna muujiyo in dardaaranka laga noqday ee ey sabab u tahay caadada ama wax kale. Caddaynta ka noqoshada waxa weeyey tallaabo kasta oo baabi'ineysa maalka uu qofku ka dardaarmay iyo isbeddel kasta oo ku dhaca wixii laga dardaarmay.

Qod. 131aad

Ogolaashada ama diidista xoolaha laga dardaarmay

Dardaaranka waxaa u shardi ah in qofka wax looga dardaarmay uu ogolaado kaddib markuu dhinto qofka wax dardaarmay si cad ama la garan karo. Haddii qofka loo dardaarmayo uu yahay ilma uurka ku jira, ama uusan qaangaarin ama uu yahay qof aan dhammeyn ogolaanshada ama diidista waxaa ku shuqul leh inuu sheego qofka maamulaya xoolihiisa. Ogolaashada ku saabsan Jimiciyadaha aha Ururadda aan danaha gaarka ah lahayn, waxaa ku dhawaaqaya qofka wakiil ka ah sharci ahaan. Haddii uusan jirin wakiil sharciyeed, dardaaranka wuxuu ku sugnaanyaa dhimashada iyadoo aan loo baahnayn ogolaansho.

Qod. 132aad

Ogolaansha ama diidista dadka wax dhaxlaya

Haddii qofka loo dardaarmayaa uu dhinto intii uusan ogolaan ama uusan diidin, waxaa meeshiisii galaya dadka isaga xaq ugu leh dhaxalka.

Qod. 133aad

Muddada lagu ogolaan karo ama lagu diidi karo dardaaranka

Shardi ma aha ogolaanshaha ama diidista dardaaranka in uu ahaado isla markuu dhimanayo qofka dardaarmayaa.

Hase yeeshee dardaaranka waxba kama jiraan haddii si rasmi ah la gaarsiiyo qofka loo dardaarmay iyo isagoo laga codsaday in uu ogolaado ama diido, uusanna ka jawaabin si qoraal ah inuu ogolaaday ama diiday 90 beri oo dhan gudahood.

Qod. 134aad

Ogolaanshaha ama diidista dardaaranka qaarkiis

Haddii qofka loo dardaarmayo uu ogolaado qayb ka mid ah dardaaranka una diido qaybta kale, waxaa bannaan qaybta la ogolaaday, waxbana ka ma jiraan tan la diiday. Haddii qaar ka mid ah dadka loo dardaarmayo ey ogolaadaan, qaarka kalena ey diidan dardaaranka ey leeyihiin, kuwa ogolaaday waa u jiraa waxbana kama jiraan kuwa diiday.

Qod. 135aad

Diidista dardaaranka ka hor ama kaddib geeridda qofka dardaarmaya

Dardaaranka la diido intuusan dhiman qofka dardaarmaya waa jiraa. Dardaaranka la diido kaddib markuu dhinto waxba ka ma jiraan.

MADAXA III AAD

Qofka loo dardaarmayo iyo waxa laga dardaarmayo

Qod. 136aad

Dardaaranka ku saabsan dad jira iyo dad aan jirin

Ma bannaana in loo dardaarmo dad aan jirin. Hase yeeshee way bannaan tahay in loo dardaarmo dad jira iyo kuwa aan jirin oo wada socda oo kooban. Haddii la helo qof ka mid ah qofka loo dardaarmayo isla markuu geeriyoonayey qofka dardaarmayaa ama kaddib wixii faa'iidada ah oo ka yimaada waxa laga dardaarmayo waxaa iska leh qofka jooga keligiis, ilaa iyo intii aan laga helin dad xaq u leh in ay la wadaagaan. Qofkasta oo iyaga ka mid ah oo la helo wuxuu la wadaagayaa faa'iidada kii hore u joogay waqtigay timaaddo ilaa iyo intii laga quusanaayo in uu jiro qof kale oo xaq u leh inuu la qabsado. Markaasoo kale wixii laga dardaarmayo iyo faai'idada ka imaanaysa waxaa iska leh dadkaasoo dhan. Qaybta uu leeyahay kii dhintay waxay noqonaysaa wax laga dhaxlay.

Qod. 137aad

Dardaaranka ku saabsan manfacada keliya

Haddii dadka loo dardaarmay ay yihiin kuwa lagu caddeeyey Qodobka hore, waxaa laga dardaarmayna ay yihiin manfaca keliya oo aan lo helin qof dadkaas ka mid ah markii uu geeriyoonayey qofka dardaarmayey manfacada laga dardaarmay waxaa iska leh dadka dhaxalka ku leh qokfii dardaarmay.

Haddii la helo qof muteystay dardaaranka markii uu dhimanayey qofka dardaarmayey ama kaddib manfacadaas isaga ayaa iska leh iyo qof kastoo muteystay oo la helo isaga kaddib ilaa iyo intii ay si isdabajoog ah u dhammaadaan, markaas kaddib manfacada waxaa yeelan doona dadka dhaxalka ku leh qofkii dardaarmay.

Qod. 138aad

Dardaaraan ku saabsan dad aan la magacaabin oo aan koobnayn

Way bannaan tahay in loo dardaarmo dad aan la magacaabin oo aan la koobin, markaasna waxaa keli ah oo xaq u leh dadka u baahan. Qaybintoodana waxaa iska leh qofka dardaaranka fulinaya isgoo aan ku xirnayn in uu wada gaarsiiyo ama si siman ugu qaybiyo. Qofka dardaaranka fulinaya waxaa dooranaya qofka dhintay, haddii uusan jirinna wuxuu xilkaasi saaran yahay Maxkamadda ama qofkay iyadu u magacawdo arrintaas.

Qod. 139aad

Dardaaranka ku saabsan ilmaha uurka ku jira

1. Way bannaan tahay in loo dardaarmo ilmaha uurka ku jira haddii la ogaado in uu jirey markii la dardaarmayey, una dhashay isagoo nool lix bilood gudahood marka laga bilaabo taariikhda la dardaarmay. Hooyada haddii aan la qabin waxaa lagama maarmaan ah inuu ilmuhu dhasho isagoo nool 12 bilood gudaheed, haddii kale dardaaranka waxba kama jiraan.

2. Haddii ilmaha loo dardaamayo oo uurka ku jiro uu leeyahay qof la yaqaan, waxaa shardi ah si uu u bannaanaado dardaarankaasii in la sugo in ilmuhu ka farcamay qofkaas. Waana la jooijnayaa faa'iidada waxa laga dardaarmayo ilaa iyo intii uu ka dhalanayo isagoo nool, markaasna la siinayaa faa'iidada.

Qod. 140aad

Dhalashada ku saabsan laba ilmood ama ka badan

Haddii naagtu ey dhasho laba ilmood ama ka badan ayagoo nool, isku mar ama muddo ka yar lix bilood. wixii lga dardaarmay waxaa xaq u leh ilmahaas ayadoo loogu qaybinayo qaybo isku mid ah haddii aan dardaaranka si kale lagu muujin. Haddii mid ka mid ah ilmahaas u dhashay isagoo aan noolayn, kan nool ama kuwaa nool ayaa xaq u leh wixii laga dardaarmay.

Qod. 141aad

Wixii looga dardaarmayo qofka wax dhaxalaya iyo xadkooda

1. Ma bannaana in wax looga dardaarmo qofka dhaxalka wax ku leh haddii eysan ogolayn dadka kale ee wax ku leh dhaxalka.

2. Waa ey bannaan tahay in looga dardaarmo qof aan wax ku lahayn dhaxalka, haddii eyna ka badnayn saddex meelood meel ka mid ah xoolaha laga dhintay, wixii ka badan saddex meelood laga qaadi maayo xoolahii looga dhintay kaddib markii uu dhintay qofka dardaarmay haddii eyna oggolaan iyagu ey yihiin dad awood u leh inay deeq u bixiyaan, garanayaana wixii ey oggolaanayaan.

Qod. 142aad

Wixii u ka dardaarmo qofka deyn lagu leeyahay

Waa ey bannaan tahay inuu dardaarmo qofka maalkiisa oo dhan ku dhammaanayo deyn lagu leeyahay. Hase yeeshee dardaarankaas lama fulinayo ilaa iyo intii uu ka dhammaanayo deynka lagu leeyahay.

Haddii deynka laga bixinayo uu ka mid yahay qayb ka mid ah maalkiisa ama uusan ka badnayn maalkiisa oo dhan, dardaaranka waxaa lagu fulinayo qaybta maalka ka soo hartay kaddib markii la bixiyo deynka.

Qod. 143aad

Deynka aan ka badnayn maalka

Haddii deynka uusan ka badnayn maalka, oo laga baxshay dhammaantiisa ama qaarkiisa wixii laga dardaarmay. Qofka loo dardaarmay waa uu sheegan karaa in la mid ah intii deynka lagu baxshay oo ah saddex meelood meel ka mid ah xoolaha markii deynta laga dhiibo.

Qod. 144aad

Amaahda uu leeyahay qofka dardaarmaya

Haddii wixii laga dardaarmay ey yihiin lacag ama xoola kale oo go'an ayna wixii laga dhintay ka mid yihiin deyn ama xoola maqan, qofka loo dardaarmay wuxuu xaq u leeyahay saddex meel, wixii soo harana waxaa qaadanaya dadka dhaxalka leh, wax alaale wixii soo baxana qofka loo dardaarmay wuxuu xaq u leeyahay saddex meelood meel ilaa iyo intii uu dhammeysanayo wixii loo dardaarmay, hase yeeshee haddii waxa laga dardaaramay laga bixin karo xoolaha laga dhintay ee jooga iyadaa lga qabanayaa.

Qod. 145aad

Dardaaranka ku saabsan qayb aan la caddeyn

Haddii dardaarnku ku saabsan yahay qayb aan la caddayn oo ka mid ah maalka laga dhintay uuna ka mid yahay deyn ama lacag maqan qofka loo dardaarmay wuxuu xaq u leeyahay inuu qaybtiisa ka qaato xoolaha jooga, markastoo la helo xoolo maqnaa, wuxuu xaq u leeyahay qaytiisa.

Qod. 146aad

Xoolaha laga dhintay oo halaaksamay ama dad kale yeesheen

Haddii dardaaranku ku saasan yahay qayb go'an oo ka mid ah xoolaha laga dhintay ama nooc ka mid ah noocyaasheeda uuna halaakmey ama dad kale ay yeesheen qofka loo dardaarmay waxba ma leh. Haddii qaarkiis lumo ama dad kale yeesheen qofka loo dardaarmay xoolaha haray wuxuu ka qaadanayaa saddex meelood haddii ay ka bixi karto; haddii kale waxaa loo qadarayaa saddex meeloodkaa uu xaqa u leeyahay.

MADAXA IV AAD

Dardaarnka ku saabsan waxyaalo lagu isticmaalo

Qod. 147aad

Dardaaranka waxa lagu isticmaalo

1. Haddii qof la yaqaan looga dardaarmo wax isticmaal leh muddo g'an oo la yaqaan bilowgeeda iyo dhammaadkeeda, qofka loo dardaarmay wuxuu xaq u leeyahay isticmaalkaas muddadaas gudaheeda.

Haddii ay muddadu dhammaato ka hor intuusan dhiman qofka dardaarmay, dardaarankaas waxba kama jiraan. Haddiise ay dhammaato markii uu dhintay ka dib qofka loo dardaarmay wuxuu xaq u leeyaahy isticmaalkaas dhimashada kaddib.

Haddii muddadu intay tahay ay go'an tahay aanse la caddeyn bilowgeeda waxay ka bilaabanaysaa markuu dhinto qofka dardaarmaya.

2. Haddii looga dardaarmo qof la yaqaan wax la isticmaalo oo weligii soconaya ama aan loo qaban muddo, ama inta uu nool yahay qofka loo dardaarmay wuxuu xaq u leeyahay intuu nool yahay oo dhan.

Qod. 148aad

Isticmaalka looga dardaarmo dad aan la koobin

1. Haddii loo dardaarmo wax la isticmaalo dad aan la koobin oo aan la kala saari karin, ma looga dardaarmo Jimciyad waxa wanaagsan ka shaqeysa eyna muddadu waligeed soconayso ama aan la xadidin, dadka loo dardaarmay waxay xaq u leeyihiin isticmaalkaas weligood.

2. Haddii loo dardaarmo dad aan la koobin oo la kala saari karo eyna muddadu soconayso ama aan la xadidin, dadka loo dardaarmay waxay xaq u leeyihiin isticmaalkaas ilaa iyo intay ka dhammaadaan .

3. Waxaa lagu dhaqmayaa nidaamka uu dhigaayo qodobka hore, haddii dardaaranku leeyahay muddo la yaqaano bilowgeeda iyo dhamaadkeeda ama muddo go'an aanse la caddayn bilowgeeda iyo dhamaadgeeda.

Qod. 149aad

Isticmaal ama dhaqan ka duwan sidii looga dardaarmay

Haddii waxaa laga dardaarmay manfacadoodu keenayso isticmaal ama ku dhaqan ka duwan sidii looga dardaarmay, waxaa u bannaan qofka loo dardaarmay inu uu isticmaalo ama uu ugu dhaqmo siduu doonayo waxaase shardi ah in uusan gaarsiin dhibaato waxaa laga dardaarmay.

Qod. 150aad

Faa'iidid ama miraha waxa laga dardaarmayo

Haddii waxa laga dardaarmayo ey leeyihiin faa'iido ama miro, qofka loo dardaarmayo ayaa xaq u leh, haddii ey jireen markii uu dhimanayey, wixii kaddib la helana isagaa leh, haddii eysan taasu ka hor imaaneyn siduu qofku uga dardaarmay.

Qod. 151aad

Cashuurta lagu leeyahay sheyga laga dardaarmayo iyo manfacadiisa

1. Haddii looga dardaarmo qof isticmaalka wax looga dardaarmay qof kale wixii cashuur ah oo lagu yeesho waxa laga dardaarmay iyo waajibaadka ku xiran in la isticmaalo waxay saaran yihiin qofka looga dardaarmay inuu isticmaalo.

2. Isticmaalka laga dardaarmay wuxuu dhacayaa markuu dhinto qofka loo dardaarmay intuusan dhamaysan isticmaalka dhammaantiis ama qaarkiis wuxu kalo ku dhici karaa in uu gato qofka loo dardaarmay wixii isticmaalkooda looga dardaarmay, iyo inuu isagu u dhaafo xaqiisa qofka loo dardaarmay inuusan dhammaysan isticmaalka dhammaantiis ka qaadane, iyo dad kale ay yeeshaan wixii laga dardaarmay.

QAYBTA II

D H A X A L K A

MADAXA I

NIDAAMKA GUUD

Qod. 152aad

Dhimashada qofka la dhaxlayo iya xaqa dhaxlidda

Xaqa dhaxlidda waxaa lagu mutaystay dhimashada qofka la dhaxlayo ama go'aan Maxkamad ka soo baxday, ama dekreeto ay soo saartay Wasaaradda Gaashaandhigga in uu dhintay qofka la dhaxlayo, sida lagu caddeeyey qodobka 45 ee sharcigaan.

Qod. 153aad

Jiridda qofka wax dhaxlay

1. Si loo mutaysto xaqa dhaxalka, waxaa shardi ah in la ogaado in uu nool yahay qofka wax dhaxlaya, kaddib markuu dhinto qofka la dhaxlayo, xataa muddo yar ha noqotee ama kaddib markii go'aan ama dekereeto ku soo baxday in uu geeriyooday.

2. Ilmaha uurka ku jira xaq buu dhaxalka u yeelanayaa haddii la helo shuruudda lagu caddeeyey qodobka 170 ee sharcigaan.

Qod. 154aad

Dhismashada isku marka ah

Markii laba qof isku mar dhintaan ama aan la caddeyn karin kii hor dhintay midkoodna xaq uma leh inuu dhaxlo kan kale.

Qodobka 155aad

Waxa laga goynayo xoolaha laga dhinto

1. Waxaa laga goynayaa xoolaha laga dhintay intaan la qaybinin waxyaalaha hoos lagu soo sheegi doono sida ay u kala horeeyaan:
   a) Wax ku filan kharajka duugidda qofka dhintay;
   b) Wixii xoolaha laga dhintay lagu leeyahay oo rahmad ah, ama wax kale oo xoolaha saaran oo waajib ah in la bixiyo.
   t) Waxa lagu gudayo deyntii lagu lahaa qofka dhintay.
   j) Wixii uu u dardaarmay oo aan ka baxsaneyn sida lagu caddeeyey sharciga. Wixii soo harana waxaa loo qaybinayaa dadka xaqa u leh dhaxalka.
2. Haddii aan la helin dad dhaxalka xaq u leh, xoolaha laga dhintay waxaa loo wareejinayaa khasnadda Dawladda.

Qod. 156aad

Waxyaalaha dhaxalka lagu waayo

Qofkii wax dilay ma dhaxli karo qofkii uu dilay.

Qod. 157aad

Asbaabta Dhaxalka

Asbaabta laysku dhaxlo waa:

a) Xigto
b) Guur

MADAXA II

QAYBTA DHAXALKA GO'AN

Qod. 158aad

Dumarka iyo ragga waa ay u siman yihiin dhaxalka

Iyadoo la hirgelinayo sida ay dhigeyso Mabaadi'da guud ee ku qoran Xaashida Kowaad iyo tan Labaad ee Kacaanka, dumarka iyo ragga dhaxalka si siman ayaa loogu qaybinayaa.

Qod. 159aad

Dadka dhaxalka xaqa u leh

1. Kaddib markii laga gooyo xuquuqda lagu leeyahay xoolaha dhaxalka, sida uu qabo qodobka 155 ee sharcigaan; dadka dhaxalka xaqa u leh waa kuwa soo socda:

Ninka iyo naagta isqaba, ilmahooda, kuwii ey sii dhaleen dheddig iyo laboodba, aabe, awoowayaasha, hooyada, ayeeyaasha, walaalaha aabe iyo hooyo dheddig iyo laboodba, walaalaha xagga aabe iyo walaalaha xagga hooyo dheddig iyo laboodba.

2. Haddii intaas qof ka mid ah la waayo ama wixii ka soo hara xoolaha dhaxalka markii mid kasta qaato xaqiisa waxaa loo wareejinayaa khasnadda Dawladda.

Qod. 160aad

Qaybta ay leeyihiin laba isqaba

1. Ninka ama naagta isqaba koodii jooga wuxuu qaadanayaa xoolaha dhaxalka barkood, haddii ayna ilmo jirin ama ilmahaas ilmahooda.
2. Haddii ilmo jiraan ama ilmahaas ilmahooda midkii hara ninka ama naagta isqaba wuxu qaadanayaa afar meelood meel.
3. Naagaha laga dhintay haddey mid ka badan yihiin, qaybta ay yada iyo aabaha keliya, labada isqada midkood wuxuu xaq u leeyahay xoolaha dhaxalka barkood, wixii soo harana waxaa loo qaybinayaa hooyada iyo aabaha sinaan.
4. Haddii dhaxalku ku kooban yahay labada isqaba midkood, hooyada iyo aabaha keliya, labada isqaba midkood wuxuu u leeyahay xoolaha dhaxalka barkood, wixii soo harana waxaa loo qaybinayaa hooyada iyo aabaha sinaan.

Qod. 161aad

Ilmaha iyo ilmaha ilmahooda

1. Qofka dhintay haddii uu ka tago wiil ama gabar keli ah, wuxuu qaadanayaa dhaxluhu xoolaha dhaxalka oo dhan.
2. Haddii qofka dhintay uu ka tago ilmo mid ka badan ha ahaadeen kuwa lab ah ama dheddig ah waxay u qaybsanayaan dhaxalka sinaan.
3. Qofka dhintay haddii uusan ka tegin ilmo, hase yeeshee ay jiraan ilmo wiilkiisu ama gabadhiisu dhaleen ha ahaadeen dheddig ama labood waxay wax u dhaxlayaan sida lagu soo caddeeyey qaybta 1) iyo 2) ee qodobkaan.

Qod. 162aad

Qaybta aabaha iyo awoowaha ay xaq u leeyihiin

1. Haddii qofka dhintay uu ka tago aabihiis keliya, aabuhu wuxuu qaadanayaa xoolaha oo dhan.
2. Haddii ay la jiraan aabaha ilmo mydku dhalay ama ilmaha ilmahooda, mid ama ka badan dheddig ama labood, aabahu wuxuu qayb u leeyahay lix meelood meel, xoolaha wixii soo harana waxaa qaadanaya ilmahaas waxaana loogu qaybinayaa si siman.
3. Awoowuhu wuxuu wax ku dhaxlayaa sida lagu caddeeyey qaybta 1) iyo 2) ee qodobkaan.

Qod. 163aad

Hooyada iyo Ayeeyada

1. Haddii qofka dhintay uu ka tagay hooyadiis oo keli ah waxay qaadanaysa xoolaha dhammaantood.
2. Haddii ay la jiraan hooyada ilmo meydku dhalay ama ilmaha ay dhaleen mid ama ka badan dheddig iyo laboodba, waxay qayb u leedahay lix meelood meel, xoolaha wixii soo harana waxaa qaadanaya ilmahaas waxaana loogu qaybinayaa si siman.
3. Ayeeyada waxay ku dhaxlaysa sida lagu caddeeyey qaybta 1) iyo 2) ee qodobkaan.

Qod. 164aad

Qaybta ay leeyihiin walaalaha

1. Qofka dhintay markuu ka tago wiil ama gabar ey walaala yihiin oo keli ah, kaasoo aabe iyo hooyaba ay wadaagaan ama midkood, wuxuu qaadanayaa dhaxluhu xoolaha oo dhan.
2. Haddiise walaaluhu mid ka badan yihiin dheddig iyo labood oo ay keligood yihiin waxay qaadanayaan xoolaha oo dhan waxaana loogu qaybinayaa si siman.
3. Walaal mid ah ama ka badan haddii ey la jiraan awoowe ama ayeeyo, waxaa awoowaha ama ayeeyada mid walba qaadanaya lix meelood meel, wixii ka soo harana waxaa qaadanaya walaalaha, waxaana loogu qaybinayaa si siman.

MADAXA III

KA XIJAABIDDA DHAXALKA

Qod. 165aad

Ka Xijaabidda

1. Ka xijaabidda dhaxalka waxaa weeye markii uu qof awood u laysaga reebo isagu cid kale kama reebi karo.
ah in uu jiro qof kale oo xaq uga leh dhaxalka.
2. Ka xijaabidda dhaxalka waxay u qaybsantaa: mid reebid ah iyo mid ka dhimid ah.

Qod. 166aad

Iska reebidda dhaxalka

Qofka isaga laga reebay dhaxalka sabab ka mid ah kuwa dhaxalka laysaga reebo isagu cid kale kama reebi karo.

Qod. 167aad

Aabe iyo hooyo — awoowe iyo ayeeyo

1. Aabaha wuxuu xijaabaa awooweyaasha iyo ayeeyayaasha dhinac kastaba ha ka yimaadeene.
Hooyaduna waxey xijaabtaa ayeeyayaasha iyo awoowayaasha dhinac kastaba ha ka yimaadeene.
2. Ayeeyadá waxaa loola jeeda hooyada hooyadeed iyo aabaha hooyadii ee darajada koowaad.
Awoowahana waxaa loola jeedaa aabaha aabihiis iyo hooyada aabaheed ee darajada koowaad.

Qod. 168aad

Walaalaha

Walaalaha dhan kastaba ha ka yimaadeene waxaa xijaaba: aabe iyo hooyada, ilmo meydku dhalay iyo ilmahooda.

Qod. 169aad

Ilmaha iyo ilmahooda — labada isqaba midkooda — aabaha iyo awoowayaasha — hooyada iyo ayeeyayaasha

1. Ilmaha meydku ka tagay waxay xijaabayaan ilmahooda.
2. Ilmaha ama ilmahooda waxay qaybta ka yareeyaan markay la jiraan dadka soo socda: labada isqaba, aabe, awoowe, hooyo, ayeeyo.

MADAXA IV

Ilmaha uurka ku jira iyo qofka la waayey

Qod. 170aad

Ilmaha uurka ku jira dhaxalsiintooda iyo shuruudda lagu dhaxlsiin karo

1. Dhaxalka ilmaha uurka ku jira waa loo haynayaa qaybta uu xaq u leeyahay.

2. Haddii uu ninku dhinto oo uu ka tago naag ama mid cadda ka tirsaneysa, ilmaheeda uurka ku jira waxba dhaxlimaayo haddii uusan dhalan isagoo nool 12 bilood gudahood ugu badnaan oo laga billaabayo taariikhdii uu dhintay ninka ama ey kala tageen.

3. Ilmaha uurka ku jira dhaxlimaayo qof ka duwan aabihiis, haddii aan la helin labadaan waxyaalood oo soo socda:

a) Inuu dhasho asagoo nool 12 bilood gudahood ugu badnaan markii laga billaabay taariikhda geerida ama kale tagga haddii ey hooyadiis tirsaneyso cidda dhimasho ama kala tegid uuna dhinto qofka la dhaxlaayo ciddada gudaheeda.

b) Inuu dhasho isagoo nool 9 bilood gudahood ugu badnaan markii laga billaabo taariikhda qofka la dhaxlayo, haddii guurka uu jiray markii uu dhimanaayey.

Qod. 171aad

Qaybta loo haynayo qofka la waayey iyo shuruuddeeda

Qofka la waayey waa loo dhigaya qaybta uu xaq ugu leeyahay dhaxalka haddii la helo isagoo noolna wuu qaadanyaa.

Haddii go'aan Maxkamadeed lagu gaaro inuu geeriyooday ama Dekereeto ka soo baxday Wasiirka Gaashaandhigga haddii uu ka mid yahay Ciidammada Qalabka sida oo lagu sheegay inuu dhintay sida lagu caddeeyey Qod. 45 ee Sharcigan, qaybtii loo hayey waxaa loo celinayaa dadka xaq u lahaa dhaxalka, markii uu dhimanayey qofka la dhaxlayo. Haddii ay caddaato qofka la waayey inuu nool yahay kaddib markii go'aan lagu gaaray inuu geeriyooday wuxuu ka qaadanayaa qaytiisii dadkii horey u qaatay.

Qod. 172aad

Qaraar Ciqaabeed

Nin kasta oo ku xadgudba sharcigaan; haddii loo xaddidin ciqaab gaar ah, ama uuna dembiga aad u cusleyn, waxaa lagu ciqaabayaa xarig ka billaabanaya 6 bilood ilaa 3 sano iyo ganaax ka billaabanayo 1000 Sh. So. ilaa 3000 Sh. So.

Qod. 173aad

Nidaminta iyo fasiridda xeerka

Xoghayaha Dowladda ee Wasaaradda Garsoorka iyo Arrimaha Diinta wuxuu awood u leeyahay inuu soo saaro Xeer Nidaamiye Dowladeed oo lagu fasirayo laguna fulinaayo sharcigan.

TUSMOOYIN KOOBAN

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PREZZO SHS. 10=

Faafin Rasmi ah

EE JAMHURIADDA DIMUQRADIGA SOMALIYA

Sannadka 3aad | Muqdisho, 8 Maarso 1975 | L. 1 R. 3

Laanta Maamulka Faafinta Rasmiga ah
ee ka tirsan madaxtooyada Golaha Sare ee Kacaanka

FAAFIN BIL SOO BAXA

QIIMADU: waa 5 shilin lambar walibe — RUKUNKA: Sanadii waa Sh. 100 Somaliya gudeheeda — dibaddedana waa Shs. 300. Rukunka la weydiisto waqtiga loo gooyey wuxuu ka bilabmaa 1 Janayo. Qiimaha qortitaanku F. R. halkii sadar iyo waxii ka yar waa 2 laba shilin — Rukunka iyo qoritaanku waxaa la weydiistaa Laanta Maamulka Faafinta Rasmiga ah — Lacagta waxaa lagu bixinayaa Xafiiska Canshuraha ee Wasaaradda Lacagta

KOBNIIN

BOGGA KOWAAD

SHARCI

SHARCI L. 23, Tr. 11 Jennaayo 1975 — *Sharciga ku saabsan Qoyska.* Bog. 1

SHARCI L. 23, Tr. 11 Jennaayo 1975 — *Sharciga ku saabsan Qoyska. Af Carabi.* Bog. 1

BOGGA LABAAD

XEER

W. M.

BOGGA SADDEXAAD

TALOOYIN, ISGARSIIN, OGEYSIIS, IYO WAXII LA MID AH

W. M.

Madbacada Qaranka — Muqdisho

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KU DHAQAN XAFIIS DAWLADEED

FAAFIN RASMI AH

الجـــريدة الرســـمية

EE JAMHURIYADDA DIMUQRADIGA SOMALIYA

لجمهـورية الصـومال الديمقراطيـة

Sannadka 3aad Muqdisho, 31 Maarso 1975 L. 1, R 3 ku celin

Laanta Faafinta Rasmiga ah ee Madaxtooyada Golaha Sare ee Kacaanka

FAAFIN BIL SOO BAXA جريـده شـهرية

QIIMADU: waa 5 shilin lambar waliba — RUKUNKA: Sanadli waa Sh. 100 Somaliya gudeheeda — dibaddedana waa Shs. 300. Rukunka la weydiisto waqtiga loo gooyey wuxuu ka bilabmaa 1 Janayo. Qiimaha qortitaanku F. R. halkii sadar iyo waxii ka yar waa 2 laba shilin — Rukunka iyo qoritaanku waxaa la weydiistaa Laanta Maamulka Faafinta Rasmiga ah — Lacagta waxaa lagu bixinayaa Xafiiska Canshuraha ee Wasaaradda Lacagta

KOBNIIN

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BOGGA LABAAD

XEER

W. M.

BOGGA SADDEXAAD

TALOOYIN ISGAARSIIN OGEYSIIS IYO WAXII LA MID AH

W. M.

Madbacada Dwladda — Muqdisho

SHARCI L. 23, dall'11 Gennaio 1975.
Legge sullo Statuto Personale.

IL PERSIDENTE
DEL CONSIGLIO RIVOLUZIONARIO SUPREMO

VISTE la Prima e la Seconda Carta della Rivoluzione;

RITENUTA la necessità di emanare una legge che regola lo Statuto Personale per la famiglia somala e per la costruzione di una sana società;

SU PROPOSTA del Segretario di Stato alla Giustizia ed Affari Religiosi;

PRESO ATTO dell'approvazione del Consiglio Rivoluzionario Supremo e del Consiglio dei Segretari di Stato;

PROMULGA

la seguente Legge:

Articolo 1

E' approvata la legge sullo Statuto Personale che è allegata alla presente Legge.

Articolo 2

Il testo in lingua Somala della legge firmati dal Presidente del Consiglio Rivoluzionario Supremo e dal Segretario di Stato alla Giustizia e Affari Religiosi servirà da originale, e viene depositata presso l'Avvocatura Generale dello Stato.

Articolo 3

La Legge sullo Statuto Personale entra in vigore dall'11 Gennaio 1975.

Mogadiscio, li 11 Gennaio 1975.

IL PRESIDENTE
del Consiglio Rivoluzionario Supremo
Jaalle Gen. Div. Mdhamed Siad Barre

IL SEGRETARIO DI STATO
alla Giustizia e Affari Religiosi
Jaalle Dr. Abdisalam Scek Hussen

LEGGE SULLO STATUTO PERSONALE

LIBRO I.

IL MATRIMONIO E DIVORZIO

Titolo I.

IL MATRIMONIO

Articolo 1

Sfera di applicazione della legge

Le norme della presente legge si applicano a tutti i casi che essa prevede. In mancanza di una norma specifica, sono applicabili le opinioni prevalenti della dottrina Shafiita, i principi generali del diritto Islamico (Sciaria) e della Giustizia Sociale.

Capo I.

PROMESSA DI MATRIMONIO

Articolo 2

Promessa di matrimonio e «yarad»

Ciascuna delle parti può promettere all'altra di contrarre matrimonio, ma tale promessa non obbliga il promittente a concluderlo. Tuttavia chi non ha intenzione di adempiere alla promessa ha l'obbligo di farne espressa dichiarazione all'altra parte.

Nessuno può essere obbligato a pagare lo «yarad». Ma chi lo paga volontariamente non può pretenderne la restituzione, se la promessa non viene mantenuta per colpa sua.

Articolo 3

Liceità della promessa

Non è lecita la promessa di matrimonio fatta a persona che sia già coniugata o già impegnata da promessa di matrimonio con altri; parimenti non è lecita la promessa di matrimonio fatta a donna cui la legge proibisce di essere moglie del promittente o a donna che sia in periodo di cidda.

Capo II.

CELEBRAZIONE DI MATRIMONIO

Articolo 4

Definizione, fondamento e scopo del matrimonio

Il matrimonio è un contratto tra un uomo e una donna aventi uguali diritti e doveri; esso ha come fondamento la comprensione e il reciproco

rispetto dei contraenti ed ha come scopo la creazione della famiglia unita, considerando che la famiglia è la base fondamentale della società.

Il marito è per diritto capo della famiglia.

Articolo 5

Modalità del matrimonio

1. Il matrimonio deve avvenire davanti al Giudice o alla persona autorizzata dal Ministero della Giustizia ed Affari Religiosi.
2. Nei luoghi dove non è possibile far celebrare il matrimonio dal Giudice o da persone autorizzate del Ministero, la celebrazione può avvenire davanti a persona che abbia profonda conoscenza del Diritto Islamico.
3. Per i cittadini Somali residenti all'estero tutte le procedure e formalità relative e connesse al matrimonio e al divorzio sono espletate all'Autorità Consolare.
4. Il matrimonio deve essere registrato presso il Tribunale Distrettuale più vicino o presso gli appositi uffici incaricati entro 15 giorni dalla data della celebrazione; tale termine è di 40 giorni per i residenti in zone rurali.
5. L'onere della registrazione incombe sulla persona che ha celebrato il matrimonio.
6. In caso di inosservanza di tale onere, senza giustificato motivo, il trasgressore è punito con l'ammenda di Sh. So. 100.
7. Il controllo delle registrazioni e l'imposizione dell'ammenda sono devoluti alla competenza del Presidente della Corte d'Appello Regionale.

Articolo 6

Elementi essenziali del matrimonio

Elementi essenziali del matrimonio sono la prófferta e l'accettazione espresse dai due contraenti in presenza di due testimoni.

Articolo 7

Costrizione, ebbrezza, infermità di mente

E' nullo il matrimonio della persona costretta a contrarlo (violenza fisica o morale), quello della persona in stato di ebbrezza, e il matrimonio dell'infermo di mente. Tuttavia, è lecito il matrimonio dell'infermo di mente se contratto su consiglio espresso da un collegio di medici.

Articolo 8

Forma del matrimonio

1. Il matrimonio viene stipulato con la profferta e l'accettazione da parte di persone capaci.
2. La profferta e l'accettazione del matrimonio avvengono oralmente in termini chiari e inequivocabili. Sia la proffera che l'accettazione debbono essere incondizionate e non sottoposte a termine.
3. Nel contratto tra presenti, la profferta e l'accettazione sono espresse verbalmente e in uno stesso luogo e l'accettazione avviene immediatamente dopo la profferta.
4. La profferta da parte di persona assente può essere fatta per iscritto oppure tramite un rappresentante munito di procura speciale.
5. In caso di difetto di favella, la profferta e l'accettazione sono fatte per iscritto; se ciò non è possibile, con un segno comprensibile.
6. La profferta è valida fino alla dichiarazione dell'accettazione.

Articolo 9

Requisiti dei testimoni

I testimoni devono essere maggiorenni, sani di mente e consci che l'oggetto del contratto è il matrimonio.

Capo III.

INTERDIZIONI

Articolo 10

Interdizione da parentela

Una persona è interdetta dal contrarre matrimonio con i suoi ascendenti e discendenti, e discendenti dei suoi genitori ed i discendenti di I° grado dei suoi nonni e delle sue nonne.

Articolo 11

Interdizione da affinità

Per motivi di affinità l'uomo non può contrarre matrimonio:

a) con la donna cheè stata moglie di uno dei suoi ascendenti;

b) con la donna che è stata moglie di uno dei suoi discendenti;

c) con le ascendenti di sua moglie;

d) con le discendenti di sua moglie con la quale egli abbia effettivamente consumato il matrimonio.

e) con le discendenti di donna con cui egli abbia avuto rapporti coniugali in seguito a contratto non valido.

Articolo 12

Interdizione da allattamento

1. L'allattamento di nutrice (Ridaac) fa sorgere le stesse interdizioni derivanti da parentela.

2. Perchè l'allattamento faccia sorgere interdizione occorre che esso avvenga nei primi 2 anni e che vi siano 5 poppate separate con ognuna delle quali il lattante sia soddisfatto.

Capo IV.

MATRIMONIO PLURIMO

Articolo 13

Condizioni

L'uomo non può contrarre matrimonio con una seconda donna senza una autorizzazione scritta rilasciata dal Tribunale Distrettuale competente.

Il Tribunale non rilascia l'autorizzazione scritta se non dopo aver accertato l'esistenza di una delle seguenti condizioni:

1. Sterilità della moglie comprovata da un collegio di medici, a meno che l'uomo non era al corrente della cosa prima del matrimonio.

2. Malattia cronica o contagiosa della moglie comprovata da certificato medico, a condizione che la malattia sia inguaribile;

3. Condanna della moglie a una pena detentiva superiore a 2 anni;

4. Assenza ingiustificata della moglie dal domicilio coniugale per un periodo superiore ad un anno;

5. Accertata necessità socio-ambientale; in questo ultimo caso l'autorizzazione può essere concessa anche dalle persone autorizzate dal Ministero della Giustizia ed Affari Religiosi.

Articolo 14

Interdizioni

Non è consentito avere insieme come moglie due donne tra le quali esiste un vincolo di parentela che impedirebbe il matrimonio tra di esse se fossero di sesso diverso.

Capo V.

«MAXLAL», LIMITI DI ETA' CASI DI NULLITA'

Articolo 15

Matrimonio tra ex coniugi (Maxlal)

1. Non è lecito per l'uomo risposare l'ex moglie da cui ha divorziato definitivamente se non dopo che è trascorso per lei il periodo di «cidda», in seguito a valido e spontaneo matrimonio con un altro uomo debitamente consumato.
2. Ogni violazione dello spirito delle disposizioni del precedente comma costituisce reato punibile con l'arresto fino a sei mesi e con l'ammenda fina a Sh. So. 1.000.

Articolo 16

Limiti minimi di età

Chiunque può liberamente contrarre matrimonio al compimento del 18° anno di età.

La donna che abbia compiuto il 16° anno e non ancora il 18° anno può contrarre matrimonio con il consenso del tutore.

Il Giudice in caso di assoluta necessità può dispensare i contraenti dall'osservanza dei termini suddetti.

Articolo 17

Consenso del tutore

Se il tutore non dà il suo consenso al matrimonio della donna che ha compiuto 16 anni e non ancora 18, il Giudice o la persona autorizzata dal Ministero della Giustizia e Affari Religiosi assume la tutela e contrae il matrimonio secondo la volontà della donna.

Articolo 18

Rappresentanza nel matrimonio

Nel contratto di matrimonio lo sposo può essere rappresentati da altri.

Capo VI.

TUTELA MATRIMONIALE

Articolo 19

Tutela

1. La tutela della donna non maggiorenne nel matrimonio spetta al padre, in mancanza di questi alla madre, poi al nonno, al fratello maggiore e allo zio.

2. Il tutore deve essere maggiorenne, sano di mente e onesto.

3. In mancanza delle persone sopra menzionate, o nel caso che nessuna di esse voglia assumere la tutela o che esse si trovino ad una distanza di 100 Km., il Giudice o la persona autorizzata dal Ministero assume la tutela.

Articolo 20

Scelta o nomina del tutore

1. In caso di presenza di più parenti di pari grado, la tutela è affidata al parente scelto dalla donna.

2. Se la donna non sceglie il suo tutore, la nomina è fatta dal Giudice.

Articolo 21

Deliberato allontanamento dal tutore

L'uomo che, allo scopo di sottrarre una donna minore all'autorità del suo tutore, contrae con essa matrimonio dopo averla condotta ad una distanza di 100 Km. dalla residenza del tutore è punito, se il fatto non costituisce più grave reato previsto dal Codice Penale, alla pena della ammenda da Sh. So. 200 a 1000 o con l'arresto fino a mesi 3.

Capo VII.

MATRIMONIO VALIDO, NULLO O VIZIATO E SUOI EFFETTI

Articolo 22

Matrimonio valido, nullo o viziato

1. Il matrimonio può essere valido, nullo o viziato.

2. Il matrimonio valido è quello che ha tutti gli elementi essenziali e le cui condizioni sono state osservate secondo le disposizioni della presente legge.

3. Il matrimonio è nullo, salvo le previsioni di cui all'art. 7:

a) se v'è un difetto nella capacità dei contraenti;

b) se è avvenuto senza testimoni;

c) se sussiste alcune delle interdizioni specificate negli articoli 10, 11, 12 e 14 della presente legge.

d) se la donna è vincolata da matrimonio con altro uomo o si trova in periodo di «cidda».

4. Il matrimonio è viziato quando non sono state osservate tutte le altre condizioni stabilite nella presente legge diverse da quelle indicate nel precedente comma.

Articolo 23

Effetti dal matrimonio nullo o viziato

1. Il matrimonio nullo non produce alcuno degli effetti propri del matrimonio.

2. Il matrimonio viziato produce soltanto i seguenti effetti:

a) paternità della prole;

b) interdizioni da affinità;

c) «cidda» in seguito a separazione o morte.

Capo VIII.

IL «MAHR»

Articolo 24

Obbligatorietà, determinazione e limite del «mahr»

1. Alla sposa spetta di diritto il «mahr».

2. La determinazione del «mahr» della sposa è obbligatoria al momento della stipulazione del matrimonio.

3. Il limite massimo del «mahr» è di Sh. So. 1000, o un bene equivalente.

Articolo 25

Anticipazione e posticipazione del mahr»

E' lecito anticipare il «mahr» o posticiparlo in tutto o in parte a termine noto.

Articolo 26

Condono del «mahr»

La moglie maggiorenne e sana di mente può condonare al marito tutto il «mahr» o parte di esso.

Articolo 27

«mahr» e divorzio

In caso di divorzio prima della consumazione del matrimonio la donna ha diritto alla metà del «mahr» specificato nel contratto.

Capo IX.

SPESE DEL MATRIMONIO

Articolo 28

Concorso nelle spese del matrimonio

Entrambi gli sposi concorrono alle spese del matrimonio e alle esigenze dell'abitazione coniugale secondo le rispettive possibilità.

Articolo 29

Proprietà comune, effetti personali e strumenti professionali

1. Le suppellettili della casa sono proprietà comune dei coniugi.

2. In caso di risoluzione del contratto tale proprietà viene divisa in parti uguali tra i coniugi.

3. Tuttavia, ciascuna dei coniugi avrà diritto esclusivo sugli effetti personali e sugli strumenti professionali.

Capo X.

MANTENIMENTO

Articolo 30

Definizione

Il mantenimento consiste negli alimenti, vestiario, abitazione, servizi, allevamento dei figli, spese per cure mediche, nonchè tutto ciò che è necessario al benessere della famiglia.

Articolo 31

Obblighi e modalità del mantenimento

1. Sia il marito che la moglie concorrono alle spese della vita in comune in proporzione al reddito di ciascuno, e se uno dei due non è

in grado di contribuire l'altro è obbligato a sopportare da solo gli oneri e le spese della vita coniugale.

2. In caso di divergenza, il Giudice si avvale del parere di esperti e decide nella maniera che considera opportuna.

3. In caso di inadempimento dell'obbligo del mantenimento da parte di uno dei coniugi, costui, se non è nullatenente, è tenuto a rimborsare la sua parte del mantenimento.

4. Se per uno dei coniugi non è possibile ottenere il mantenimento dall'altro per motivi diversi dalla indigenza di quest'ultimo, il Giudice stabilisce il mantenimento addebitandone la spesa al coniuge inadempiente e autorizzando l'altro a contrarre debito nella misura stabilita.

5. Il creditore ha diritto a pretendere la restituzione direttamente dal coniuge obbligato dal Giudice.

Articolo 32

Mantenimento provvisorio

1. In caso di accoglimento del motivo della pretesa del mantenimento e delle sue condizioni, il Giudice può stabilire per il coniuge una quota di mantenimento provvisorio fino alla decisione finale in merito.

2. Tale decisione è immediatamente esecutiva.

Capo XI.

OBBLIGO DELLA COABITAZIONE

Articolo 33

Coabitazione

1. I due coniugi hanno l'obbligo della coabitazione, salvo caso di necessità o di comune accordo.

2. La moglie è tenuta a seguire il marito, a meno che non vi sia un legittimo impedimento.

Titolo II.

ESTINZIONE E RISTABILIMENTO DEL MATRIMONIO

Articolo 34

Modi di estinzione

Il contratto di matrimonio si estingue col divorzio (dhalaaq), lo scioglimento (fasakh) o la morte di uno dei coniugi.

Capo I.

IL DIVORZIO

Articolo 35

Divorzio revocabile e definitivo

1. Il «dhalaaq» è di due tipi: Revocabile o definitivo.

2. Il «dhalaaq» revocabile non fa cessare il vincolo matrimoniale fino al termine del periodo di «cidda».

3. Il «dhalaaq» definitivo fa cessare il vincolo del matrimonio nel momento in cui avviene.

4. Ogni «dhalaaq», è revocabile ad eccezione del «dhalaaq» prima della consumazione del matrimonio e del terzo «dhalaaq» che completa gli altri due.

Articolo 36

Modalità del divorzio

1. La facoltà del divorzio (dhalaaq) spetta al marito previa autorizzazione del Tribunale competente.

2. Il Tribunale non può autorizzare se non dopo aver deferito il caso ad una Commissione di conciliazione nominata dallo stesso Tribunale e aver constatato il fallimento dei tentativi di conciliazione tra i coniugi.

3. In caso di mancata riconciliazione, la Commissione trasmette relativo verbale scritto al Tribunale dopo 60 giorni dalla data della nomina.

4. Il Tribunale non può autorizzare più di un «dhalaaq» per volta.

Articolo 37

Ricostituzione dell'unione matrimoniale

Il divorzio revocabile non fa cessare immediatamente il vincolo matrimoniale; l'unione può essere ricostituita anche nel periodo di «cidda».

Articolo 38

«Baynunat Sughra»

Trascorso il periodo della «cidda» il divorzio revocabile diventa irrevocabile (Baynunat sughra) e l'uomo può risposare l'ex moglie soltanto con un nuovo contratto.

Articolo 39

«Baynunat kubra»

Il «dhalaaq» definitivo (baynunat kubra) cioè il terzo «dhalaaq» che completa gli altri due, fa cessare immediatamente il vincolo matrimoniale, e l'uomo non può risposare l'ex moglie se non dopo che sono osservate le condizioni di cui all'art. 15.

Articolo 40

Divorzio dell'impedito nella parola

In caso di difetto di favella, il divorzio è fatto per iscritto o con un segno comprensibile.

Articolo 41

Validità del divorzio

Perchè il «dhalaaq» sia valido è necessario che il marito sia maggiorenne e sano di mente. Non è valido il «dhalaaq» del pazzo, del minore, di chi viene illegalmente costretto.

Capo II.

SCIOGLIMENTO DEL MATRIMONIO

Articolo 42

Scioglimento (fasakh)

1. Lo scioglimento (fasakh) è la risoluzione del contratto matrimoniale da parte del Giudice.

2. Lo scioglimento produce gli stessi effetti del divorzio (dhalaaq) non definitivo.

3. L'azione giudiziaria di scioglimento del matrimonio fa perdere al marito la facoltà del «dhalaaq».

Articolo 43

Casi di scioglimento

1. Sia il marito che la moglie hanno il diritto di presentare richiesta di scioglimento del rapporto matrimoniale in uno dei seguenti casi:

a) se l'altro coniuge è affetto da malattia inguaribile che non consente i rapporti coniugali, o per cui i rapporti sono possibili ma causano danno, a condizione che la cosa sia comprovata da certificato medico, e che il postulante non ne era a conoscenza prima del matrimonio;

b) se uno dei coniugi è assente per un periodo superiore a 4 anni consecutivi; ma se l'assente torna prima della pronuncia della sentenza di scioglimento, la richiesta non può più essere accolta;

c) se il coniuge che è in condizione di farlo si astiene abitualmente dal fornire il mantenimento al coniuge bisognoso;

d) se entrambi i coniugi sono nulla-tenenti e nessuno di essi può far fronte agli obblighi del mantenimento. Ma il Giudice prende una decisione sul caso soltanto dopo che sono trascorsi 6 mesi dalla presentazione della domanda di scioglimento;

e) se il disaccordo tra i due è divenuto grave e tale da rendere impossibile la vita coniugale. In questo caso il Tribunale segue la procedura stabilita nell'articolo 36.

f) impotenza o sterilità perpetue di uno dei coniugi;

g) condanna ad una pena superiore a 4 anni, a condizione che la richiesta di scioglimento sia fatta dopo che il condannato abbia già scontato 4 anni di pena.

2. La moglie ha diritto a chiedere lo scioglimento del matrimonio se il marito abbia ricevuto, ai sensi dell'art. 13 autorizzazione a contrarre nuovo matrimonio, e se dal suo matrimonio non sia nata prole.

Articolo 44

Mantenimento

Se il divorzio «Dalaaq» e lo scioglimento «Fasakh» avvengono per colpa dell'uomo, il Giudice condanna quest'ultimo al mantenimento dell'ex moglie per un periodo non inferiore a 3 mesi e non superiore a un anno. Se invece avvengono per colpa della donna, questa viene condannata al pagamento in favore del marito di una somma non superiore al «Mehr».

Capo III.

MORTE PRESUNTA

Articolo 45

Dichiarazione di morte presunta

La morte presunta di persone scomparse viene dichiarata d al Giudice dopo quattro anni dalla data della scomparsa, mentre per gli appartenenti alle Forze Armate dispersi nel corso di operazioni militari, il Ministero della Difesa emana un decreto di morte presunta dopo quattro anni dalla scomparsa. Tale Decreto equivale a sentenza.

Articolo 46

«Cidda» in seguito a morte presunta

Dopo la sentenza o il Decreto di morte presunta emesso dal Ministero della Difesa, la moglie osserva la «cidda» del morto dal momento della pronuncia della sentenza o dell'emanazione del Decreto.

Articolo 47

Risoluzione e ristabilimento del vincolo

1. Alla sentenza o al decreto di cui agli articoli precedenti consegue la risoluzione del contratto matrimoniale.

2. Se lo scomparso ritorna e risulta vivo durante il periodo di «Cidda», il vincolo matrimoniale si ristabilisce automaticamente.

3. Trascorso il periodo di «Cidda», la risoluzione del contratto matrimoniale diventa definitiva.

Capo IV.

LA «CIDDA »

Articolo 48

Obbligo della «Cidda»

La donna è obbligata a osservare il periodo di «Cidda» nei seguenti casi:

a) scioglimento «Fasakh» del matrimonio consumato;

b) divorzio «Dhlaaq» revocabile o definitivo successivo a matrimonio consumato;

c) morte vera o presunta del marito, anche se prima della consumazione.

Articolo 49

«Cidda» non obbligatoria

La «Cidda» non è obbligatoria se non vi è stata consumazione del matrimonio, salvo il caso previsto all'articolo 48 parag. (c).

Articolo 50

Durata della «Cidda»

1. La «Cidda» della donna incinta dura fino al parto o all'aborto.

2. La ««Cidda» della donna non incinta è di 90 giorni.

3. La «Cidda» della donna il cui marito muore è di 4 mesi e 10 giorni.

4. La «Cidda» decorre dalla data del divorzio «Dhalaaq» o della morte del marito o dello scioglimento «Fasakh».

Articolo 51

«Cidda» per divorzio e per morte

1. In caso di morte del marito nel periodo in cui la donna è in periodo di «cidda» in seguito a divorzio (dhalaaq) revocabile, la moglie passa alla «cidda» per morte e il periodo precedente non viene calcolato.

2. Se il marito muore nel periodo in cui la moglie osserva la «cidda» in seguito a divorzio definitivo si completa la «cidda» del divorzio e non si passa alla «cidda» per morte.

Articolo 52

Mantenimento durante la «cidda»

Durante il periodo di «cidda» il marito continua a dare il mantenimento alla moglie qualora questi era precedentemente obbligato a farlo.

LIBRO II.

PROLE E MANTENIMENTO

Titolo I.

LA PARENTELA

Capo I.

DISCENDENZA PARTERNA

Articolo 53

Periodo di gravidanza

Il periodo minimo di gravidanza è di 180 giorni e il periodo massimo è di un anno solare.

Articolo 54

Presunzione e prove della paternità

1. Nel matrimonio valido la discendenza della prole dal marito è provata alle seguenti due condizioni:

a) che sia trascorso dal tempo del contratto matrimoniale il periodo minimo di gravidanza.

b) che non sia dimostrata l'impossibilità di incontro dei coniugi a causa di un impedimento effettivo che è durato dal tempo del contratto al tempo del parto, o che tale impedimento sia avvenuto dopo il contratto e sia durato per dodici mesi consecutivi. Nel caso che l'impedimento cessi, il periodo di gravidanza viene computato dalla data della cessazione.

2. In mancanza di una delle precedenti condizioni, la discendenza non è provata, a meno che il marito non la riconosca.

Articolo 55

Paternità durante e dopo la «cidda»

1. Se la donna in periodo di «cidda» susseguente a divorzio revocabile partorisce, la paternità della prole è del divorziante.

2. Se partorisce dopo che il periodo di «cidda» è considerato finito per essere trascorso il termine o per ammissione della donna, la paternità si ritiene provata se la donna ha partorito la prole entro centottanta giorni dalla data della presunta cessazione della «cidda». In questo caso il parto si considera prova del ritorno del marito (rajcat) e della continuazione del periodo di «cidda», salvo che il marito non provi il contrario.

Articolo 56

Paternità in seguito a divorzio definitivo o morte del marito

La discendenza della prole è provata nel caso di parto di donna in periodo di «cidda» susseguente a divorzio definitivo (baynuat) o a morte del marito, qualora la nascita avvenga entro dodici mesi dalla data del divorzio definitivo o dalla morte del marito.

Articolo 57

Paternità del matrimonio viziato

Nel matrimonio viziato la discendenza della prole è provata se la donna ha partorito prima dell'abbandono o della separazione, dopo 6 mesi ed entro 12 mesi dall'effettivo rapporto coniugale.

Articolo 58

Paternità non provata

La paternità non è provata se viene accertato in maniera decisiva che l'uomo è impotente o non può generare figli per un impedimento fisico o patologico. In caso di controversia il Tribunale si avvale del parere di esperti.

Capo II.

DISCENDENZA MATERNA

Articolo 59

Prova della maternità

La maternità di ogni creatura è stabilita con il semplice accertamento della nascita, senza vincolo e condizioni.

Ne derivano tutte le conseguenze di carattere economico e morale relative alla maternità e filiazione.

Capo III.

RICONOSCIMENTO DI PATERNITA'

Articolo 60

Riconoscimento di paternità

L'ammissione di paternità fatta da un uomo, ancorchè in punto morte a favore di persona di ignota paternità, stabilisce la discendenza della prole da quell'uomo, a condizione che la differenza di età tra i due lo consenta.

Articolo 61

Consenso al riconoscimento

L'ammissione di paternità o di maternità stabilisce la discendenza a condizione che vi sia il consenso da parte di colui a favore del quale l'ammissione è stata fatta, e che la differenza di età tra i due lo consenta.

Capo IV.

ALLEVAMENTO DEL MINORE (XADANA)

Articolo 62

Allattamento obbligatorio

La madre è obbligata ad allattare il bambino, quando non è possibile nutrirlo diversamente per qualsiasi ragione.

Articolo 63

Allevamento (Xadana)

L'allevamento del bambino consiste nell'educarlo, istruirlo e curarne la formazione morale, salvi restando i diritti propri del tutore.

Articolo 64

Idoneità all'allevamento

1. L'allevamento dei maschi fino al 10° anno e delle femmine fino al 15° anno spetta alla madre. Qualora la madre passa ad altre nozze, questa può continuare ad allevare i figli a condizione che il padre ne sia consenziente.

2. Se vi è un legittimo impedimento o nel caso di morte della madre, l'allevamento dei figli passa al padre o ad alcuna delle familiari.

3. In mancanza o nel caso di non idoneità delle succitate persone il Giudice può affidare l'allevamento ad altre persone tenendo conto dell'interesse dell'allevando.

4. Il Giudice può riaffidare l'allevamento alla madre o ad alcuna delle familiari se constata che la causa della non idoneità è venuta meno.

Articolo 65

Requisiti dell'allevante

La persona che alleva il bambino deve essere maggiorenne, sana di mente, leale verso l'allevando.

Articolo 66

Preferenza nell'allevamento

Nel caso di più parenti di pari grado, aventi diritto all'allevamento del bambino, il Giudice dà la preferenza a chi si offre senza compenso.

Articolo 67

Matrimonio dell'allevante

La donna cui è stato affidato l'allevamento del minore perde il diritto all'allevamento se contrae matrimonio con persona non parente del minore.

Questa disposizione non si applica alla madre vedova allevante.

Articolo 68

Decadenza dal diritto all'allevamento

Il diritto all'allevamento non ha decadenza e termine con lo scadere del periodo dell'allevamento.

Articolo 69

Termine dell'allevamento

1. Il diritto di una persona all'allevamento termina al compimento del 15° anno da parte della bambina, e dal 10° anno da parte del bambino.

2. Il Giudice può consentire che l'allevamento del bambino o della bambina continui oltre tale limite se ritiene che essi non siano in grado di giudicare da soli le loro cose.

3. L'allevamento termina di norma al compimento del 18° anno.

Articolo 70

Proroga dell'allevamento

Se al termine del periodo di allevamento il minore, maschio o femmina che sia è malato, demente o pazzo, è la madre la persona più adatta a curarlo e a tenerlo, anche se ha superato il limite della maggiore età. Se non vi è la madre, il Giudice lo affida alla persona che egli ritiene più adatta.

Articolo 71

Trasferimento all'estero

1. L'allevante non può trasferirsi col minore fuori della Repubblica se non col consenso del tutore.

2. In caso di contrasto tra la persona che alleva il minore e il tutore la decisione spetta al Giudice.

Articolo 72

Diritto di vedere l'allevando

Se il bambino vive con uno dei genitori, questi non può impedire all'altro di vederlo o di tenerlo presso di sè per brevi periodi. Tale diritto spetta solo ai genitori. In caso di controversia decide il Giudice.

Articolo 73

Sospensione dell'allevamento

Il diritto di vedere il minore non può essere fatto valere con la forza; ma se l'allevante si oppone, il Giudice può disporre la sospensione dell'allevamento per un periodo non superiore ad un mese.

Titolo II.

IL MANTENIMENTO

Articolo 74

Diritto al mantenimento

Ai parenti non spetta il mantenimento, con l'eccezione degli ascendenti e dei discendenti.

Articolo 75

Mantenimento dei figli

1. Se il bambino non ha proprietà deve essere mantenuto dai genitori benestanti.

2. Il mantenimento dei figli da parte dei genitori continua:

a) per la ragazza fino al suo matrimonio o fino a quando, essendo maggiorenne, abbia trovato un lavoro che la rende autosufficiente.

b) per il ragazzo fino al compimento del 18° anno di età.

3. Se il ragazzo ha compiuto 18 anni ed è incapace di lavorare a causa di malattia o deve continuare gli studi, il mantenimento continua ad essere a carico dei genitori.

4. Nel periodo in cui dura il mantenimento, i figli sono soggetti all'autorità paterna.

5. In caso di risoluzione del contratto matrimoniale, per qualsiasi causa, il mantenimento dei figli è regolato ai sensi degli articoli 31 e 32 della presente legge.

Articolo 76

Mantenimento dei genitori

1. Il figlio maschio o femmina abbiente, ha l'obbligo di mantenere i genitori, qualora questi non siano in grado di mantenersi.

2. Se i figli sono più di uno partecipano al mantenimento dei genitori in proporzione del loro reddito.

Articolo 77

Diritti e doveri del povero

1. Il povero che non è obbligato al mantenimento è colui che non possiede proprietà di valore superiore a quanto basta secondo la consuetudine ai bisogni attuali legittimi e ai bisogni dei suoi figli, al pagamento dei debiti scaduti o di prossima scadenza, e non ha proventi di professione o altro sufficienti a soddisfare quanto sopra indicato.

2. Il povero che ha diritto ad essere mantenuto da altri è colui che non trova quanto necessario al suo sostentamento o non ne trova a sufficienza.

Articolo 78

Diritti e doveri del benestante

Il benestante che è obbligato al mantenimento è colui che possiede proprietà di valore superiore a quanto richiesto secondo la consuetudine per i suoi bisogni attuali legittimi e per i bisogni dei suoi figli, al pagamento dei debiti scaduti o di prossima scadenza, o che ha proventi di professione o altro superiori a quanto richiesto per il soddisfacimento dei bisogni suindicati.

2. Non si considerano proprietà eccedenti i bisogni summenzionati i beni immobili o il capitale da cui dipende il guadagno del benestante, nè la casa il cui valore o la cui ampiezza non siano superiori alle esigenze di abitazione del proprietario e dei suoi figli.

Articolo 79

Ordine di precedenza

1. Se gli aventi di diritto al mantenimento sono più di uno e l'obbligato non può mantenerli tutti, la precedenza spetta alla moglie, ai figli, poi ai genitori.

2. Se le persone responsabili del mantenimento sono più di uno e tutti sono in grado di provvedervi, ognuno di essi paga la sua quota a ciascuno degli aventi diritto.

3. Se non sono in grado di provvedere al versamento di tutte le quote del mantenimento, si applica la disposizione del primo comma del presente articolo.

Articolo 80

Decorrenza e termine

Il mantenimento decorre dalla data in cui il diritto è maturato. Esso si considera un debito e non decade se non con l'adempimento o con la remissione.

Articolo 81

Compensazione

Non avviene compensazione tra il mantenimento del figlio da parte del padre e l'eventuale credito che il padre ha verso la madre che alleva il bambino.

LIBRO III.

TUTELA, CURATELA E PROCURA

Titolo I.

LA TUTELA

Articolo 82

Il tutore

La tutela sulla persona e sulla proprietà del minore spetta al padre, alla madre, poi al nonno, poi ai rispettivi curatori.

Articolo 83

Obblighi del tutore

Il tutore custodisce la proprietà del minore, l'amministra e tutela il modo di disporne con l'osservanza delle norme previste nella presente legge.

Articolo 84

Divieto di donazione di beni

Non è lecita la donazione di beni e dei frutti della proprietà del minore. Se alcuno fa donazione di essi, l'atto è nullo e soltanto chi lo fa ne è vincolato e responsabile.

Articolo 85

Uso di beni

Il tutore non può disporre degli immobili del minore a suo beneficio o a beneficio di sua moglie o dei suoi parenti o dei parenti della moglie fino al quarto grado se non con l'autorizzazione del Tribunale. Come pure non può dare in garanzia gli immobili del minore per un debito suo personale.

Articolo 86

Prestito di beni

Il tutore non deve dare in prestito la proprietà del minore nè prenderla a prestito se non con il consenso del tribunale.

Articolo 87

Termine della tutela

La tutela cessa col raggiungimento della maggiore età da parte del minore, a meno che il Tribunale non ne decida la continuazione.

Articolo 88

Revoca o limitazione della tutela

Se la proprietà del minore viene a trovarsi in pericolo per cattiva amministrazione del tutore o per qualsiasi altro motivo, il Tribunale revoca o limita la tutela.

Articolo 89

Restituzione dei beni

Il tutore o i suoi eredi sono tenuti a restituire la proprietà del minore nel momento in cui questi raggiunge la maggiore età. Mentre per quei beni di cui hanno disposto, essi sono responsabili del valore che i beni avevano al momento della disposizione.

Titolo II.

CURATELA E PROCURA

Capo I.

CURATELA DEL MINORE

Articolo 90

Requisiti del curatore

Il curatore deve essere persona avente piena capacità di agire, adeguato al compito e di buona reputazione. In particolare non può essere nominato curatore:

a) il condannato per reato grave;

b) la persona nota per la sua cattiva condotta e la persona che non ha mezzi legali di sussistenza;

c) la persona a cui in precedenza è stata revocata la tutela, o che è stata esonerata dalla curatela di altro minore;

d) la persona che ha una controversia giudiziaria col minore, o la persona i cui ascendenti o discendenti o moglie hanno una controversia giudiziaria col minore, oppure se esiste ostilità tra la persona e il minore o la sua famiglia, quando da tutto ciò vi è ragione di temere per il bene del minore.

Articolo 91

Nomina del curatore

Sia il padre che la madre e il nonno possono nominare un curatore di loro scelta per il minore, e possono in ogni tempo revocare la nomina.

La curatela viene deferita al Tribunale per la conferma.

Articolo 92

Nomina del curatore da parte del Tribunale

Se per il minore non è stato scelto un curatore, è il Tribunale che lo nomina.

Articolo 93

Nomina di più curatori

1. Se vi è necessità è lecito nominare più di un curatore. In tal caso essi non possono agire isolatamente.

2. Se vi è contrasto tra i curatori, la questione viene deferita al Tribunale per la decisione.

Articolo 94

Obblighi del curatore

Il curatore riceve la proprietà del minore per amministrarla e averne cura. In ciò egli deve porre la stessa premura che è richiesta al procuratore retribuito.

Articolo 95

Divieti e limiti delle attività del curatore

Il curatore non può compiere i seguenti atti se non con l'autorizzazione del Tribunale:

a) disporre degli immobili del minore o darli in garanzia;

b) disporre dei beni mobili o del danaro contante, ad eccezione di ciò che è inerente all'attività di amministrazione ordinaria;

c) prendere a prestito denaro del minore o darlo in prestito;

d) dare in affitto immobili del minore per un periodo superiore a tre anni se non a vantaggio del minore;

e) dare in affitto immobili del minore per un periodo che si estende oltre un anno dalla data del raggiungimento della maggiore età da parte del minore;

f) rinunciare a diritti e a reclami e accettare sentenze che possono esse appellate per fondato motivo o rinunciare ad un tale appello dopo di averlo proposto.

g) prendere a prestito la proprietà del minore per se stesso o per sua moglie o alcuno dei di lei parenti fino al quarto grado o per persona di cui il curatore è rappresentante.

Articolo 96

Custodia del danaro liquido

Il curatore deve depositare a nome del minore in una cassa del Tribunale o in una Banca secondo quanto indicato dal Tribunale tutto il danaro che riceve, dopo aver messo da parte quanto stabilito per il mantenimento e la somma che il Tribunale stima opportuna per le spese di amministrazione. Ciò deve essere fatto entro quindici giorni dalla data in cui il danaro è stato ricevuto, e il curatore non può prelevare niente di quel danaro se non con l'autorizzazione del Tribunale.

Articolo 97

Resoconto dell'amministrazione

Il curatore deve presentare al Tribunale competente un resoconto della sua amministrazione corroborato da documenti entro il 31 dicembre di ogni anno.

Articolo 98

Retribuzione del curatore

Al curatore non spetta retribuzione. Ma il Tribunale, a sua richiesta, può attribuirgli uno stipendio o concedergli un compenso per un lavoro specifico.

Articolo 99

Termine della curatela

Il compito del curatore termina:

a) col raggiungimento della maggiore età da parte del minore, a meno che non sia stata decisa la continuazione della curatela;

b) con la sua rimozione o con l'accettazione delle sue dimissioni;

c) con la perdita della capacità di agire, o con l'accertamento dell'assenza, o con la morte.

d) con la morte del minore.

Articolo 100

Rimozione del curatore

La rimozione del curatore viene decisa nei seguenti casi:

a) se esiste una delle cause di incompatibilità stabilite nell'articolo 90 anche se tale causa era già esistente al tempo della nomina;

b) se il curatore malamministra la proprietà o la trascura, oppure la sua permanenza in carica è divenuta un pericolo per gli interessi del minore.

Articolo 101

Consegna dei beni

Il curatore entro trenta giorni dalla data della cessazione della curatela deve consegnare la proprietà in sua custodia al Tribunale competente.

Articolo 102

Consegna dei beni da parte degli eredi o del rappresentante

Se il curatore muore o viene interdetto o è considerato assente, i suoi eredi o chi lo rappresenta, sono tenuti a consegnare la proprietà del minore al Tribunale competente.

Capo II.

CURATELA DELL'INTERDETTO

Articolo 103

Pronuncia dell'interdizione e nomina del curatore

1. L'interdizione è pronunciata con sentenza nei confronti del maggiorenne per motivo di pazzia o di demenza dalla data della scoperta del motivo di interdizione. Parimenti viene sentenziata l'interdizione per motivo di stoltezza o fatuità. L'interdizione è revocata solo con sentenza.

2. Il Tribunale nomina un curatore dei beni dell'interdetto. All'amministrazione dei beni dell'interdetto si applicano le norme stabilite per la curatela dei minori.

Articolo 104

Spese per le cure dell'interdetto

Le spese necessarie per le cure dell'interdetto hanno preminenza su tutte le altre.

Articolo 105

Curatore dell'interdetto

La curatela spetta al padre, poi al nonno, poi a chi viene scelto dal Tribunale.

Capo III.

PROCURA PER L'ASSENTE

Articolo 106

L'assente

Il Tribunale nomina per l'assente un procuratore nei seguenti casi quando è trascorso un anno o più di assenza e da ciò deriva danno ai suoi interessi:

a) se è scomparso e non si sa se è vivo o morto;

b) se non ha un luogo di residenza o un domicilio conosciuto, o se la residenza e il domicilio sono fuori della Repubblica e gli è impossibile accudire personalmente ai suoi affari o controllare la persona cui ha delegato l'amministrazione.

Articolo 107

Conferma della procura per l'assente

Se l'assente ha lasciato un procuratore generale il Tribunale ne decide la conferma quando sussistono in lui le condizioni necessarie per la curatela, altrimenti nomina un'altra persona.

Articolo 108

Cessazione dell'assenza

L'assenza cessa col venir meno delle sue cause o con la morte dell'assente, o con sentenza o dichiarazione di morte presunta da parte dell'organo competente.

Articolo 109

Norme applicabili alla procura per l'assente

Alla procura per l'assente si applicano le norme stabilite per la curatela dei minori.

Articolo 102

Consegna dei beni da parte degli eredi o del rappresentante

Se il curatore muore o viene interdetto o è considerato assente, i suoi eredi o chi lo rappresenta, sono tenuti a consegnare la proprietà del minore al Tribunale competente.

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Il Tribunale nomina per l'assente un procuratore nei seguenti casi quando è trascorso un anno o più di assenza e da ciò deriva danno ai suoi interessi:

a) se è scomparso e non si sa se è vivo o morto;

b) se non ha un luogo di residenza o un domicilio conosciuto, o se la residenza e il domicilio sono fuori della Repubblica e gli è impossibile accudire personalmente ai suoi affari o controllare la persona cui ha delegato l'amministrazione.

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Se l'assente ha lasciato un procuratore generale il Tribunale ne decide la conferma quando sussistono in lui le condizioni necessarie per la curatela, altrimenti nomina un'altra persona.

Articolo 108

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L'assenza cessa col venir meno delle sue cause o con la morte dell'assente, o con sentenza o dichiarazione di morte presunta da parte dell'organo competente.

Articolo 109

Norme applicabili alla procura per l'assente

Alla procura per l'assente si applicano le norme stabilite per la curatela dei minori.

Titolo III.

ADOZIONE

Articolo 110

Condizioni richieste per l'adozione

Le persone di cui siano ignoti i genitori possono essere adottate da cittadini somali che abbiano raggiunto la maggiore età, o anche da altri cittadini che abbiano la residenza permanente nel Paese.

La differenza di età tra adottante e adottato deve essere non inferiore a quella che può intercorrere tra padre e figlio.

Le persone di cui è noto il padre possono essere adottate a condizione che conservino il nome del padre.

Articolo 111

Procedura per l'adozione

Chi intende adottare una persona che si trovi nelle condizioni descritte all'articolo che precede deve farne domanda al Giudice Distrettuale del luogo dove la persona si trova manifestando la irrevocabile volontà di procedere all'adozione e dimostrando di essere in possesso dei mezzi materiali per prendere cura di essa.

Articolo 112

Provvedimento del Giudice

Il Giudice, valutate le circostanze che possono consigliare o sconsigliare l'adozione e sentita, quando sia possibile, la persona da adottare, provvede con decreto accogliendo o rigettando la domanda. Il Provvedimento è preso su parere non vincolante del Pubblico Ministero.

Articolo 113

Trasmissione del provvedimento di adozione all'ufficio di Stato Civile

In caso di accoglimento il decreto che dichiara l'adozione deve essere tramsesso all'ufficio di Stato Civile ed annotato sull'atto di nascita dell'adottato e dell'adottante. Con l'annotazione il nome dell'adottante viene aggiunto a quello dell'adottato.

Articolo 114

Effetti dell'adozione

L'adozione fa nascere tra adottante ed adottato un rapporto identico a quello derivante della filiazione. Se l'adottante ha altri figli l'adottato concorre in pari misura con questi nei diritti e negli obblighi verso il genitore adottante.

Articolo 115

Sorveglianza sui minori adottati

La sorveglianza sul trattamento usato ai minori adottati spetta al Pubblico Ministero ed al Giudice Tutelare.

Articolo 116

Casi eccezionali di adozione

In casi eccezionali che non rientrano nelle previsioni della presente legge l'adozione può essere disposta con provvedimento del Presidente del Consiglio Rivoluzionario Supremo.

LIBRO IV.

LA SUCCESSIONE EREDITARIA

Titolo I.

IL TESTAMENTO

Capo I.

DEFINIZIONE E CONDIZIONI DI VALIDITA'

Articolo 117

Definizione

Il testamento consiste nel disporre dei propri beni dopo la morte.

Articolo 118

Forma

Il testamento viene fatto oralmente o per iscritto con termini che indichino tale volontà. Se il testatore è incapace di parlare o di scrivere il testamento viene fatto con segni comprensibili.

Articolo 119

Validità

Perchè il testamento sia valido è condizione necessaria che non sia fatto con riluttanza e che il movente non sia incompatibile con la legge. Se il testatore non è musulmano, il testamento è valido a condizione che non sia illegale secondo al legge del testatore e non sia contrario all'ordine pubblico.

Articolo 120

Testamento condizionato

1. Salve restando le disposizioni dell'articolo precedente è valido il testamento collegato, sottoposto o vincolato a condizione. Se la condizione è lecita deve essere rispettata, fintanto che l'interesse che essa intendé tutelare persiste. La condizione non deve essere rispettata se è illecita o se è venuto meno l'interesse cui essa mirava.

2. Condizione valida è quella che riveste un interesse per il testatore o il chiamato all'eredità o altri, e non sia contraria o incompatibile con i fini della legge.

Articolo 121

Requisiti del testatore

Il testatore deve essere maggiorenne, sano di mente e libero di agire, anche se sotto tutela per stoltezza o fatuità (safah - ghaflat). E' valido il testamneto dell'apostata a condizione che ritorni all'Islam, altrimenti il testamento è nullo.

Articolo 122

Condizioni per il chiamato all'eredità

1. Il chiamato all'eredità è soggetto alle seguenti condizioni:

a) che sia conosciuto;

b) che abbia la capacità di essere proprietario, se trattasi di persona;

c) che esista al momento del testamento, se è stato nominato.

2. Se non è stato nominato, non è necessario che esista al momento del testamento o al momento della morte del testatore.

Articolo 123

Lascito in opere di bene

E' lecito il testamento a favore di luoghi di culto, istituti di beneficenza o altri organismi di carità o culturali a condizione che questi non siano in contrasto con i principi della «Sciaria» islamica. Il lascito viene speso per le esigenze degli edifici, dei poveri e delle altre attività di tali istituti, se la consuetudine o indicazioni contenute nel testamento non stabiliscono diversamente. E' lecito il lascito a favore di Dio l'Altissimo e ad opere di bene senza indicazione di organismo, e in tal caso il lascito viene speso in opere di bene.

Articolo 124

Condizioni per il lascito

Il lascito testamentario è soggetto alle seguenti condizioni:

a) che sia una cosa atta ad essere trasferita ereditariamente, o che può lecitamente essere oggetto di contratto;

b) che sia cosa il cui godimento è lecito;

c) che sia cosa esistente al momento del testamento e di proprietà del testatore se è stata specificamente indicata.

Articolo 125

Lascito di quota determinata

E' valido il testamento che stabilisce per il beneficiario una quota determinata dei suoi beni. Se tale quota è superiore ad un terzo dell'eredità, la disposizione non viene eseguita per la parte eccedente il terzo, se non col consenso degli eredi.

Articolo 126

Nullità del testamento del pazzo

E' nullo il testamento di persona completamente pazza quando lo stato di pazzia è durato fino alla morte. Come pure è nullo il lascito in relazione al beneficiario se questi muore prima del testatore.

Articolo 127

Nullità del testamento se il lascito perisce

E' nullo il testamento se il lascito è determinato e perisce prima che il chiamato all'eredità ne venga in possesso.

Articolo 128

Testamento dello stolto e del fatuo

Non è nullo il testamento di persona impedita per stoltezza o fatuità (safah - ghaflat).

Articolo 129

Uccisione del testatore

Se il chiamato all'eredità sano di mente uccide volontariamente il testatore, non può ricevere l'eredità.

Capo II.

REVOCA, ACCETTAZIONE E RINUNZIA

Articolo 130

Revoca del testamento

Il testatore può revocare il testamento in tutto o in parte in forma esplicita o implicita. Si considera revoca del testamento ogni azione o comportamento che lasci intendere la revoca per coerenza o per consuetudine. Indicazioni di revoca sono ogni comportamento atto ad annientare la proprietà del testatore e ogni modificazione delle caratteristiche della cosa data in lascito.

Articolo 131

Accettazione o rinunzia del testamento

Il testamento è soggetto ad accettazione da parte del beneficiario in forma esplicita o implicita dopo la morte del testatore. Se il beneficiario è un nascituro (janin) o un minore o un interdetto l'accettazione o la rinunzia sono espresse da chi esercita la tutela sui beni. L'accettazione da parte di organismi o istituti o fondazioni di beneficenza viene espressa da chi li rappresenta legalmente. In mancanza di legali rappresentanti il testamento ha effetto indipendentemente dall'accettazione.

Articolo 132

Accettazione o rinunzia espressa dagli eredi

Se il beneficiario muore prima dell'accettazione o della rinunzia all'eredità, tale incombenza passa ai suoi eredi.

Articolo 133

Termini per l'accettazione o la rinunzia

Non è necessario che l'accettazione o la rinunzia avvengano immediatamente dopo la morte del testatore. Tuttavia il testamento è nullo se, essendo stato notificato al beneficiario in forma ufficiale ed essendo stato a lui chiesto di accettarlo o rinunciare ad esso, egli non ha espresso per iscritto l'accettazione o la rinunzia entro 90 giorni completi.

Articolo 134

Accettazione o rinunzia parziale

Se il beneficiario accetta parte dell'eredità o rinunzia ad altra parte di essa, è valida la parte accettata e nulla la parte rinunciata. Se alcuni chiamati all'eredità l'accettano e altri vi rinunciano, il testamento è valido per quelli che l'hanno accettato e nullo per quelli che vi hanno rinunciato.

Articolo 135

Rinunzia espressa prima o dopo la m orte del testatore

Il testamento rinunciato prima della morte del testatore non è nullo. E' nullo invece se viene rinunciato dopo la morte.

Capo III.

IL CHIAMATO ALL'EREDITA' E IL LASCITO

Articolo 136

Lascito a persone esistenti o inesistenti

Non è valido il testamento a favore di persone inesistenti. Ma è valido se comprende persone esistenti e persone inesistenti, purchè numerabili. Se si trova uno dei chiamati al tempo della morte del testatore o dopo, i profitti dell'eredità spettano a lui solo, fintanto che non si trovino altri che participano con lui ai profitti. Ognuno di essi participa ai profitti assieme alla persona che era esistente prima, fino a quando svanisce la possibilità dell'esistenza di altra persona avente diritto. Allora i profitti o il capitale diventano proprietà di essi tutti, e la quota di chi fra essi muoia va a far parte della sua eredità.

Articolo 137

Lascito di sole rendite

Se il lascito alle persone indicate nell'articolo precedente consiste di sole rendite, e non si trovi alcuno dei beneficiari al tempo della morte del testatore, le rendite vanno agli eredi del testatore, Se al tempo della morte del testatore o dopo si trova uno degli aventi diritto la rendita va a lui e a tutti quelli che vengono fuori dopo di lui, fino alla loro progressiva scomparsa, dopo di che la rendita passa agli eredi del testatore.

Articolo 138

Lascito a persone indicate senza specificazione e delimitazione

E' valido il testamento a favore di persone indicate senza specifizione e delimitazione, e i bisognosi tra queste persone hanno diritto al lascito in esclusiva. La suddivisione del lascito è demandata alla cura dell'esecutore testamentario, che non è vincolato a fare una distribuzione generale o in parti uguali. Tale compito appartiene all'esecutore testamentario scelto dal defunto e, in sua mancanza, al tribunale o alla persona da questo nominato.

Articolo 139

Testamento a favore del nascituro

1. E' valido il testamento a favore del nascituro, se se ne conosce l'esistenza al momento in cui il testamento è stato fatto e se nasce vivo entro sei mesi dalla data del testamento. Se la madre non è coniugata, è necessario che il bambino nasca entro dodici mesi, altrimenti il testamento è nullo.

2. Se il testamento è a favore di nascituro di persona specificata, perchè sia valido è necessario che siano soddisfatte le condizioni per le determinazione della discendenza del nascituro dalla persona specificata e i proventi del lascito restano sospesi fino alla nascita del bambino vivo, allorchè il lascito diventa di sua proprietà.

Articolo 140

Nascita di due o più bambini

Se la puerpera dà alla luce due o più bambini vivi nello stesso tempo o entro meno di sei mesi, il lascito spetta a loro in parti uguali, a meno che non sia diversamente stabilito dal testamento. Se uno dei bambini nasce morto, il vivo o i vivi hanno diritto a tutto il lascito.

Articolo 141

Lascito a favore dell'erede. Limite del lascito

1. Non è lecito fare un lascito ad un erede a meno che gli altri eredi non lo consentano.

2. E' lecito il lascito a persona diversa dall'erede entro il limite di un terzo dell'eredità. La parte eccedente un terzo non crea vincoli per l'eredità, a meno che non sia autorizzata dagli eredi dopo la morte del testatore, ed essi siano capaci di fare donazioni o capiscano ciò che autorizzano.

Articolo 142

Lascito fatto da persona che ha debiti

E' lecito il lascito fatto da debitore la cui proprietà è assorbita da debiti. Ma la disposizione non viene eseguita se non in seguito a remissione del debito. Se la remissione è solo parziale o il debito non supera tutta la proprietà, la disposizione viene eseguita sulla parte di proprietà restante dopo il soddisfacimento del debito.

Articolo 143

Debito non eccedente la proprietà

Se il debito non supera la proprietà ed è stato soddisfatto tutto o parzialmente, attingendo dal lascito, il beneficiario del lascito può reclamare la somma corrispondente alla parte del debito che è stato soddisfatto attingendo dal terzo restante dell'eredità dopo il soddisfacimento del debito.

Articolo 144

Lascito di persona che ha crediti

Se il lascito è costituito da una somma determinata di danaro o da un bene e nell'eredità vi è credito o del patrimonio non appariscente, qualora il lascito provenga dal terzo appariscente dell'eredità il chiamato ha diritto ad esso; in caso contrario ha diritto ad esso nella misura del terzo e il resto va agli eredi, e di ogni cosa che venga alla luce il chiamato ha diritto ad un terzo fino al soddisfacimento del suo diritto.

Articolo 145

Lascito di quota generica

Se il lascito si riferisce ad una quota generica dell'eredità e in essa vi è un credito o del patrimonio non appariscente, il chiamato ha diritto alla sua quota di quanto è appariscente nell'eredità. E di ogni cosa che venga alla luce egli ha diritto alla sua parte.

Articolo 146

Lascito di beni o cose che vanno perdute o sono dovute ad altri

Se il lascito consiste di un bene facente parte dell'eredità o di un particolare tipo di cose, e queste vanno perdute o sono dovute ad altri, il chiamato al lascito non ottiene niente. Se vanno perdute o sono dovute solo in parte, il chiamato ottiene quanto resta se provengono dal terzo dell'eredità, altrimenti ha diritto ad un terzo.

Capo IV.

LASCITO DI UTILIITA'

Articolo 147

Lascito di utilità

1. Se il lascito consiste in una utilità ad una persona determinata per un periodo di tempo di cui è noto il principio e la fine, il chiamato al lascito ha diritto al godimento di tale utilità per quel periodo. Se il periodo di tempo termina prima della morte del testatore, il lascito si considera non fatto. Se termina dopo, il chiamato ha diritto al godimento della utilità per quel periodo dopo la morte. Se il periodo è determinato ma non ne è specificato l'inizio, si fa decorrere dalla data della morte del testatore.

2. Se il lascito consistente in una utilità a persona determinata è perpetuo o per la durata della sua vita o illimitato, il chiamato ha diritto al godimento dell'utilità per tutta la vita.

Articolo 148

Lascito di utilità a persone di numero non delimitato

1. Se il lascito consistente in una utilità a favore di persone di numero non delimitato di cui non si presume separazione, o a favore di una organizzazione benefica, nel caso il lascito sia perpetuo o illimitato, il beneficiario ha diritto al godimento dell'utilità in perpetuo.

2. Se il lascito è perpetuo o illimitato a favore di persone di numero non delimitato di cui si presume separazione, i beneficiari hanno diritto al godimento dell'utilità fino alla loro definitiva estinzione.

3. Si applicano le disposizioni dell'articolo precedente se il lascito è per un periodo di tempo con inizio e termine noto o per un periodo di tempo determinato senza indicazione dell'inizio e del termine.

Articolo 149

Diversa utilizzazione o sfruttamento

Se il bene la cui utilità è stata lasciata in eredità consente un'utilizzazione o uno sfruttamento diverso da quello indicato nel testamento, il beneficiario può utilizzarlo e sfruttarlo nella maniera che ritiene opportuna purchè il bene la cui utilità è stata ereditata non subisca danno.

Articolo 150

Reddito o frutto

Se il lascito concerne il reddito o il frutto di un bene il chiamato ha diritto al reddito e al frutto esistenti al tempo della morte del testatore e a ciò che sarà prodotto in futuro, a meno che non vi sia qualche indicazione in contrario.

Articolo 151

Tasse dovute sul bene e sull'eredità

1. Se il lascito di una utilità è a favore di qualcuno e la proprietà del bene appartiene ad un altro, le tasse dovute sul bene e le obbligazioni connesse con l'utilità sono a carico del beneficiario della utilità.

2. Il lascito di utilità cade con il decesso del beneficiario prima di aver goduto in tutto o in parte l'utilità, e con l'acquisto da parte del beneficiario del bene la cui utilità aveva ereditato, e con la rinuncia del diritto a favore degli eredi del testatore con o senza compenso, e con la legale rivendicazione del bene da parte di altri.

Titolo II.

L'EREDITA'

Capo I.

DISPOSIZIONI GENERALI

Articolo 152

Morte del testatore e diritto all'eredità

Il diritto all'eredità si stabilisce con la morte del testatore o con la presunzione di morte dichiarata con sentenza o con decreto del Ministero della Difesa secondo quanto indicato nell'articolo 45 della presente legge.

Articolo 153

Esistenza in vita dell'erede

1. Perchè si stabilisca il diritto all'eredità è necessario che si accerti l'esistenza in vita dell'erede, anche per un attimo, dopo la morte del testatore o dopo la dichiarazione di morte presunta con sentenza o decreto.

2. Il nascituro ha diritto all'eredità se restano soddisfatte le disposizioni dell'art. 170 della presente legge.

Articolo 154

Comorienza

Nel caso che due persone muoiono contemporaneamente e non si sa chi è morto prima, non si stabilisce diritto di eredità tra di essi, sia che siano morti in un'unica circostanza che in circostanze diverse.

Articolo 155

Detrazioni obbligatorie dall'eredità

1. Dall'eredità, prima della sua divisione, si attinge per far fronte a compiti e doveri secondo il seguente ordine:

a) quanto basta ai funerali del morto;

b) quanto occorre per pagare ipoteche o altro sui beni ereditari;

c) quanto occorre per soddisfare i debiti del morto;

d) ciò che è stato dato come lascito entro i limiti previsti dalla legge.

Quanto resta dopo di ciò viene distribuito tra gli eredi.

2. Se non vi sono eredi l'eredità va all'erario dello Stato.

Articolo 156

Perdita del diritto all'eredità

Chi uccide il suo dante causa perde il diritto di eredità.

Articolo 157

Titoli di eredità

I titoli di eredità sono:

1. parentela.
2. rapporto coniugale.

Capo II.

QUOTE LEGITTIME

Articolo 158

Uguaglianza dei sessi nell'eridità

In conformità ai principi sanciti nella Prima e nella Seconda Carta della Rivoluzione, femmine e maschi hanno pari diritti nella divisione dell'eredità.

Articolo 159

Gli aventi diritto all'eredità

1. Dopo aver detratto i diritti dovuti sul patrimonio secondo il disposto dell'articolo 155, gli aventi diritto all'eredità sono:
Marito e moglie, figli, figli dei figli di entrambi i sessi, padre, nonni, madre, nonne, fratelli e sorelle germani, fratelli e sorelle di solo padre e fratelli e sorelle di sola madre.

2. Qualora non vi sia alcuno degli aventi diritti suindicati, oppure se in seguito alla partizione dell'eredità resta qualche cosa di essa, l'intera eredità o la parte restante di essa va all'erario dello Stato.

Articolo 160

Quote spettante ai coniugi

1. Al vedovo o alla vedova spetta la metà del patrimonio in assenza di figli o figli dei figli.

2. In presenza di figli o figli dei figli al vedovo o alla vedova spetta un quarto del patrimonio.

3. Se vi sono più vedove la quota loro spettante di una metà o un quarto come sopra indicato viene tra di loro divisa in parti uguali.

4. Se assieme al coniuge superstite vi sono il padre e la madre del marito; al coniuge superstite spetta la metà del patrimonio e al padre e alla madre il resto che viene diviso tra loro in parti uguali.

Articolo 161

Figli e figli dei figli

1. Se il morto lascia un solo figlio o figlia, questi eredita l'intero patrimonio.

2. Se vi sono più figli e figlie, l'eredità viene divisa tra loro in parti uguali indipendentemente dal loro sesso.

3. Se non vi sono figli, ma vi sono figli del figlio e della figlia, l'eredità viene divisa tra loro secondo quanto stabilito nei commi 1 e 2 del presente articolo.

Articolo 162

Quota del padre e del nonno

1. Se la persona che muore lascia il solo padre, questi eredita l'intero patrimonio.

2. Se assieme al padre vi sono anche figli e figlie del morto o figli e figlie di questi ultimi al padre spetta la quota di un sesto, e i figli e figlie si dividono tra loro in parti uguali la parte restante del patrimonio.

3. La quota spettante al nonno è regolata dalle disposizioni dei commi 1 e 2 del presente articolo.

Articolo 163

Madre e nonna

1. Se la persona che muore lascia la sola madre, questa eredita l'intero patrimonio.

2. Se assieme alla madre vi sono anche figli e figlie o figli e figlie di questi ultimi, alla madre spetta la quota di un sesto, e i figli e figlie si dividono tra loro in parti uguali la parte restante del patrimonio.

3. La quota spettante alla nonna è regolata dalle disposizioni dei commi 1 e 2 del presente articolo.

Articolo 164

Quota dei fratelli e sorelle

1. Se il morto lascia solamente un fratello o una sorella, germano o di solo padre o madre, questi eredita l'intero patrimonio.

2. Se tali fratelli o sorelle sono più di uno, spetta loro l'intero patrimonio che viene diviso in parti uguali.

3. Se assieme ad uno o più fratelli o sorelle vi è il nonno o la nonna, a questi ultimi spetta la quota di un sesto e ai fratelli o sorelle la parte restante del patrimonio che viene tra loro divisa in parti uguali.

Capo III.
ESCLUSIONE

Articolo 165

Esclusione

1. Vi è «xajab» (esclusione) quando una persona ha la capacita di ereditare ma non può ereditare per la presenza di un altro avente diritto all'eredità.

2. L'esclusione può essere totale o parziale.

Articolo 166

Impedimento all'eredità

La persona nei cui confronti esiste un impedimento all'eredità non esclude altri dell'eredità.

Articolo 167

Padre e nonno. Madre e nonne

1. Il padre esclude i nonni e le nonne, da qualunque linea provengono. Altrettanto la madre esclude le nonne ed i nonni da qualunque linea provengono.

2. Per nonna si intende la madre della madre e la madre del padre di solo primo grado.

Per nonno si intende il padre del padre e il padre della madre di solo primo grado.

Articolo 168

Fratelli e sorelle

Tutti i fraletti e sorelle sia germani che di solo padre o madre vengono esclusi dal padre e dalla madre, dai figli del morto e loro figli.

Articolo 169

Figli e figli dei figli

Coniuge. Padre e nonni, madre e nonne

1. I figli del morto escludono i loro figli, il padre esclude i nonni, e la madre esclude le nonne.

2. I figli o i figli dei figli, in presenza di: uno dei coniugi, il padre, il nonno, la madre, la nonna, fanno diminuire la quota spettante a questi ultimi.

Capo IV.

IL NASCITURO E L'ASSENTE

Articolo 170

Eredità spettante al nascituro e condizioni

1. Al nascituro viene riservata la propria quota dopo la divisione dell'eredità.

2. Se l'uomo muore lasciando la moglie o donna in periodo di «cidda», il nascituro di quest'ultima non eredita se non nasce vivo entro dodici mesi al massima dalla data del decesso o della separazione.

3. Il nascituro non eredita da persone diverse da suo padre se non si verifica una delle seguenti due ipotesi:

a) che nasca vivo entro dodici mesi al massimo dalla data del decesso o della separazione nel caso che la donna sia in periodo di «cidda» per morte del marito o risoluzione del vincolo matrimoniale, e il testatore muoia durante la «cidda».

b) che nasca vivo entro nove mesi al massimo dalla data del decesso del testatore, se è frutto di relazione matrimoniale esistente al tempo del decesso.

Articolo 171

Quota riservata per l'assente e condizioni

1. Per l'assente viene riservata la quota dell'eredità di sua spettanza, e se compare vivo, la prende.

2. Se per l'assente vi è stata dichiarazione di morte presunta da parte del tribunale o è stato emesso decreto di morte presunta dal Ministero della Difesa nel caso l'assente apparteneva alle Forze Armate, se-

condo il disposto dell'art. 45 della presente legge, la quota riservatagli viene distribuita tra gli aventi diritto al momento del decesso del dante causa. Se invece egli compare vivo dopo la dichiarazione di morte presunta, prende la sua quota delle persone che l'avevano ricevuta precedentemente.

Articolo 172

Disposizioni Penali

Chiunque viola le disposizioni della presente Legge, in mancanza di una specifica sanzione penale e qualora il fatto non costituisca più grave reato, è punito con la reclusione da 6 mesi a 3 anni e con la multa da Sh. So. 1000 a Sh. So. 3.000.

Articolo 173

Norme regolamentari e di attuazione

Al Segretario di Stato alla Giustizia e Affari Religiosi è demandata la facoltà di emanare norme regolamentari e di attuazione e interpretazione della presente Legge.

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LAW No. 23 of 11th January, 1975.
FAMILY LAW.

THE PRESIDENT

OF THE SUPREME REVOLUTIONARY COUNCIL

HAVING SEEN The first and the Second Charter of the Revolution;

CONSIDERING It necessary to promulgate a law concerning family life of the Somali People in order to create a healthy society;

HAVING HEARD The proposal of the Secretary of State for Justice and Religious Affairs;

HAVING HEARD The deliberations of the Supreme Revolutionary Council and the Council of Secretaries of State;

HEREBY PROMULGATES

the following law:

Article 1

The «Family Law» attached herewith is hereby promulgated.

Article 2

A copy of this law written in the Somali Language and signed by the President of the Supreme Revolutionary Council along with the Secretary of State for Justice and Religious Affairs shall be the original and shall be kept in the Office of the State Counsel.

Article 3

This Law shall come into force as from the 11th January, 1975.

Muqdiscio, 11 January, 1975.

THE PRESIDENT
of the Supreme Revolutionary Council
Major General Mohamed Siyad Barre

SECRETARY OF STATE
for Justice and Religious Affairs
Dr. Abdisalam Sheikh Hussein

FAMILY LAW

BOOK I.

MARRIAGE AND DIVORCE

Part. I.

MARRIAGE

Article 1

Application of the Law

The provisions of this law shall apply to all cases herein provided for. In the absence of a specific provision, the leading doctrines of the Shafei school of law, the general principles of the Islamic law (Shariat) and social justice shall apply.

Chapter I.

PROMISE OF MARRIAGE

Article 2

Promise of marriage and «Bride's money» (Yarad)

1. Any party may promise marriage to the other, but the promisor is not obliged to fulfil the promise. However, the party who does not intend to fulfil his/her promise is obliged to convey his/her intention to the other party in clear terms.

2. Nobody may be compelled to pay Bride's money (Yarad). However he who pays «Yard» on his own volition may not reclaim it if he is responsible for the breach of the promise.

Article 3

Lawful promise

It is not lawful to promise marriage to a woman who is already married or already engaged to another man; likewise it is not lawful to promise marriage to a woman who is within the prohibitted degrees of relationship or to a woman who is going through the period of «Iddat».

Chapter II.

CONTRACT OF MARRIAGE

Article 4

Definition and object of marriage

1. Marriage is a contract between a man and a woman having equal rights and duties; it is founded on mutual understanding and reciprocal respect between the contracting parties and its object is to create a united family, recognising that the family is the corner stone of society.
2. The husband is by law the head of the family.

Article 5

Formalities of marriage

Marriage shall be performed before a judge or a person authorised by the Ministry of Justice and Religious Affairs.

2. Where it is not possible to perform marriage before a judge or a person authorized by the Ministry, the marriage may be performed before a person who is well versed in the Islamic law.

3. Somali citizens residing abroad may perform marriage and divorce before the Somali Consular authorities.

4. Marriage shall be registered at the nearest District Court or at the expressly authorized office within 15 days of its performance. However, this period may be extended to 40 days for residents in rural areas.

5. The responsibility for registering the marriage lies upon the person who has performed it.

6. Whoever fails to discharge the duty mentioned above without any reasonable cause shall be punished with a fine of So. Sh. 100.

7. The supervision over registration and imposition of the fine are within the competence of the President of the Regional Court of Appeal.

Article 6

Essential elements of marriage

The essential elements of a marriage are the proposal and acceptance expressed by the contracting parties in the presence of two witnesses.

Article 7

Constraint, drunkenness and insanity

The marriage is not valid if contracted under compulsion whether physical or moral, in a state of drunkenness or by an insane person. However, the marriage of an insane person is valid if contracted upon advice of a panel of doctors.

Article 8

Form of marriage

1. Marriage may be performed by means of a proposal and acceptance expressed by legally competent persons.
2. Proposal and acceptance of marriage may be expressed orally by means of clear and unequivocal words. Both proposal and acceptance must be unconditional and not subject to any fixed periods.
3. The proposal and acceptance must be made in one meeting. The acceptance shall immediately follow the proposal.
4. Proposal may be made in the absence of the person who makes it. In such cases it shall be made in writing or through a special proxy.
5. If the proposal and acceptance cannot be made orally they shall be made in writing, if even that is not possible understandable signs may be used.
6. Proposal is valid until it is accepted.

Article 9

Requisites of witnesses

Witnesses shall be legally competent (major), of sound mind and conscious of the fact that the contract is one of marriage.

Chapter III.

PROHIBITIONS

Article 10

Prohibitions relating to consanguinity

A person is prohibitted from contracting marriage with his/her ascendants and descendants, the descendants of his/her parents and the first degrees descendants of his/her grand parents.

Article 11

Prohibition relating to affinity

For reasons of affinity a person is prohibitted from contracting marriage with:

a) A woman who has been the wife of one of his ascendants;

b) A woman who has been the wife of one of his descendants;

c) An ascendant of his wife;

d) A descendant of his wife, if he has consumated the marriage with her;
e) A descendant of a woman with whom he has had conjugal intercourse following an invalid contract of marriage.

Article 12

Prohibitions relating to fosterage

1. Fosterage is as much a prohibition to marriage as consanguinity.
2. Fosterage shall not prohibit marriage unless it is proved that the child was breast-fed during the first two years of his life and the suckling took place on five different occasions with each of which the child was satisfied.

Chapter IV

MARRIAGE TO A SECOND WOMAN

Article 13

Conditions

A man may not contract marriage with a second woman unless he is authorized in writing by the competent District Court. The Court shall not authorize such a marriage unless it has ascertained the existence of one of the following conditions;

1. Sterility of the wife certified by a panel of d octors, provided that the husband was not aware of the fact before marriage.
2. Chronic or contagious disease of the wife, certified by a doctor, provided that the disease in incurable.
3. The wife is sentenced to imprisonment of more than 2 years.
4. Unjustified absence of the wife from the matrimonial home for a period of more than one year.
5. Existence of a social necessity. In this case, the authorization shall be granted by a person so authorized by the Ministry of Justice and Religious Affairs.

Article 14

Other prohibitions

It is forbidden to have as wives two women if between them there is a relationship which would prohibit marriage between them if they were of different sex,

Chapter V.

MARRIAGEABLE AGE AND VOID MARRIAGES

Article 15

Permission to remarry a former wife

1. It is unlawful for a man to remarry his former wife whom he has divorced by means of three «Talaqs» unless her «Iddat» period has elapsed following a valid, voluntary, and duly consummated marriage with another man.

2. Any person who violates the above mentioned provision shall be punished with imprisonment up to six months and fine up to So. Sh. 1000.

Article 16

Marriageable age

A person may freely contract marriage at the attainment of his/her 18th year of age. A woman who has attained the age of 16 years, but not 18, may contract marriage with the consent of her guardian. However the Court, in cases of necessity, may exempt the contracting parties from the observance of the age limits.

Article 17

Guardian's Consent

If the guardian refuses to give his consent to the marriage of his ward who has reached 16 years of age but not 18, the Judge or the person authorized by the Ministry of Justice and Religious Affairs shall assume the guardianship upon himself and shall perform the marriage according to her wishes.

Article 18

Marriage by Proxy

In the marriage contract the bridegroom may be represented by another person.

Chapter VI.

MARRIAGE GUARDIANSHIP

Article 19

Guardianship

1. Girls who have not attained the age of majority may be represented in the conract of marriage by her father and in his absence by her mother, her grandfather, her elder brother and then her uncle.

2. The guardian shall be of age, of sound mind and honest.

3. In the absence of the above-mentioned persons, or in case none of them wants to take the guardianship upon himself, or they are at a distance of more than 100 Km. from the place of marriage, the Court or the person so authorised by the Ministry of Justice and Religious Affairs shall assume the guardianship.

Article 20

Choice or appointment of guardian

1. If there are more than one relatives of the same degree, guardianship is entrusted to the relative chosen by the girl.

2. If the girl does not choose her guardian, the Court shall appoint a guardian.

Article 21

Escape from guardian's authority

Whoever, for the purpose of contracting marriage, takes away a girl who has not attained the age of majority to a place more than 100 Km. from her guardian's residence in order to escape from his authority, shall be punished, where the act does not constitute a more serious offence, with fine from So. Sh. 200 to So. Sh. 1000, or with imprisonment for a period not exceeding 3 months.

Chaper VII.

VALID, VOID AND IRREGULAR MARRIAGES AND THEIR CONSEQUENCES

Article 22

Valid, void and irregular marriages

1. A marriage may be either valid, void or irregular.
2. A valid marriage is that which contains all its essential elements and whose conditicns have been observed according to this law.
3. A marriage is void if it does not fulfil the following conditions in addition to those provided in Article 7.
   a) if the contracting parties are legally incapable;
   b) if it has taken place without witnesses;
   c) if the woman is under any of the interdictions specified in articles 10, 11, 12 and 14 of this law;
   d) if the woman is married to another man or she is observing the period of her «Iddat».
4. A marriage is irregular if any of the conditions provided in this law, other than those mentioned in the preceding paragraph, have not been observed.

Article 23

Legal effects of void and irregular marriage

1. The effect of a void marriage is that it creates no civil rights or obligations between the parties.
2. An irregular marriage produces the following effects:
   a) Legitimacy of the children.
   b) Prohibitions on grounds of affinity.
   c) «Iddat» following a divorce or death.

Chapter VIII.

DOWER (Mahr)

Article 24

Obligatoriness, determination and limit of Dower (Mahr)

1. The bride is entitled by law to dower.
2. the Dower shall be determined at the time of marriage.
3. The maximum limit for Dower is So. Sh. 1000 or its equivalent in kind.

Article 25

Advance and postponement of Dower

It is lawful to pay in advance or postpone the dower fully or in part, upto a fixed time.

Article 26

Remission of Dower

A wife who has attained the age of majority and is of sound mind may relinquish the whole dower «Mahr» or part of it.

Article 27

Dower and Divorce

In case divorce occurs before consummation of the marriage, the woman is entitled to half the dower specified in the marriage contract.

Chapter IX.

MARRIAGE EXPENSES

Article 28

Contribution to Marriage Expenses

Both the spouses shall contribute towards the marriage expenses and the exigencies of the matrimonial home in proportion to their financial capabilities.

Article 29

Joint property and personal affects

1. The house furniture is the joint property of husband and wife.
2. On the rescission of the contract such property shall be divided equally between husband and wife.
3. However, husband and wife shall each have exclusive right over their personal affects.

Chapter X.

MAINTENANCE

Article 30

Definition of Maintenance

Maintenance consists of alimony, clothes, housing, services, rearing of children, medical expenses and all that is necessary for the welfare of the family.

Article 31

Obligation of maintenance and its formalities

1. Both husband and wife shall share the expenses of the matrimonial home in proportion to their incomes; but in case one of them is not in a position to contribute, the other is obliged to bear all the expenses himself/herself alone.

2. In case of a dispute between husband and wife, the court may seek the opinion of persons having knowledge of the dispute and decide in the way it deems proper.

3. If either the husband or wife fails to fulfil his/her obligation regarding maintenance, he/she is bound, provided that he/she is not absolutely destitute, to pay his/her share.

4. If either the husband or the wife finds it impossible to obtain maintenance from his/her partner due to reasons other than the latter's indigence, the Court shall fix the maintenance debiting it against the defaulting partner and authorizing the other to contract debts upto the amount fixed above.

5. The creditor is entitled to claim restitution directly from the party against whom the Court has passed a decree.

Article 32

Provisional maintenance

1. Where a maintenance claim and its conditions are entertained by a Court, it may fix for the party suing a provisional amount until a final decision on the case is reached.

2. Such a decision is immediately enforceable.

Chapter XI.

DUTY OF COHABITATION

Article 33

Cohabitation

1. Husband and wife are obliged to cohabit with each other except in cases where cohabitation becomes impossible or there is a mutual agreement to contrary.

2. The wife is obliged to follow her husband, provided that there is no legal impediment to that.

PART II.

DISSOLUTION AND RE-ESTABLISHMENT OF MARRIAGE

Article 34

Ways of dissolution

The marriage contract ceases with divorce (talaq), dissolution (faskh) or death of one of the spouses.

Chapter I.

DIVORCE (TALAQ)

Article 35

Revocable and Irrevocable divorce

1. Divorce (Talaq) is of two kinds: revocable and irrevocable.
2. Revocable divorce does not bring to an end the marriage link until termination of the «Iddat» period.

3. Irrevocable divorce brings the marriage to an end at the moment it occurs.

4. Any divorce (talaq) is revocable, with the exception of that which occurs before consummation of the marriage and the one with the pronouncement of the third «talaq» which completes the former two.

Article 36

Formalities of divorce

1. The right of divorce (talaq) belongs to the husband subject to the authorization by the competent court.

2. The Court may authorize a divorce only after referring the case to a conciliation committee appointed by it and upon ascertaining that it had failed its attempted reconciliation between the husband and wife.

3. In case of failure in the attempted reconciliation, the committee shall transmit its findings to the court within 60 days of its appointment.

4. The Court shall not authorize more than one «talaq» at a time.

Article 37

Re-establishment of marriage relationship

A revocable divorce shall not end the marriage relationship immediately; the union may be re-established during the period of «Iddat».

Article 38

When revocable divorce becomes irrevocable

Once the «Iddat» period lapses the revocable divorce becomes irrevocable and the man may remarry his former wife only by means of a new marriage contract.

Article 39

Irrevocable divorce

Irrevocable divorce namely the divorce which occurs with the pronouncement of the third «talaq» which completes the other two, ends the marriage relationship immediately and the man may not remarry his former wife unless the conditions specified in Article 15 are fulfilled.

Article 40

Divorce by dumb person

A dumb person may divorce in writing or through understandable signs.

Article 41

Validity of divorce

For a divorce (talaq) to be valid, the husband should be of age and of sound mind. A divorce by an insane person, a minor and a person under compulsion shall be invalid.

Chapter II.

DISSOLUTION OF MARRIAGE

Article 42

Dissolution (faskh)

1. Dissolution (faskh) means the rescission of the marriage contract brought about by the court.

2. Dissolution has the same legal effects as revocable divorce.

3. A suit for dissolution of the marriage shall deprive the husband of his right of divorce.

Article 43

Cases of dissolution

1. Both husband and wife are entitled to file a pettion for dissolution of the marriage in any of the following cases:

a) If one of the spouses is suffering from an incurable disease which does not allow cohabitation or even if possible, it causes harm, on condition that the fact is proved by a medical certificate and that the petitioner was not aware of it before marriage;

b) If the where abouts of one of the spouses are not known for more than 4 consecutive years; but if the missing person reappears before the dissolution judgment is delivered, the dissolution petition shall be rejected.

c) If one of the spouses, though able to provide, habitually refuses to provide maintenance to the other spouse who is actually in need of such maintenance.

d) If both husband and wife do not own anything and therefore none of them is able to meet the maintenance obligations, the Court shall decide the case only after 6 months from the date the dissolution petition was filed.

e) If disagreement between the spouses has become so serious as to make conjugal life impossible. In this instance the court shall follow the procedure laid down in Article 36.

f) Perpetual mpotency or sterility of one of the spouses.
g) If one of the spouses is sentenced to imprisonment for a period exceeding four years, provided the petition of dissolution is submitted after the imprisoned spouse has completed his sentence.

2. The wife is entitled to apply for dissolution of the marriage if her husband has been authorized, according to Article 13, to contract another marriage and on condition that no children were born.

Article 44

Maintenance

Where Divorce (talaq) or dissolution (faskh) results through the fault of the husband, the Court shall order him to maintain his former wife for a period not less than three months and not more than one year.

If the divorce or dissolution results through a fault on the part of the wife the Court shall order her to pay to the husband a sum not less than her dower.

Chapter III.

PRESUMPTION OF DEATH

Article 45

Declaration relating to presumption of death

Presumption of the death of a missing person is declared by the Court after four years of his disappearance; as to members of the Armed Forces who disappear in the course of military operations, the Ministry of Defence shall issue a decree relating to presumption of death four years after such disappearance.

The Court shall declare the presumption of the death of a missing person after four years of his disappearance.

Article 46

«Iddat» after the presumption of death

After the declaration by the court or a decree of presumption of death is issued by the Ministry of Defence, the wife shall observe the «Iddat» of death from the moment the declaration is made or the decree is issued.

Article 47

Dissolution and re-establishment of marriage relationship

1. The declaration or decree specified in the preceding articles shall bring about dissolution of the marriage.
2. If the missing person re-appears or is known to be alive during the period of «Iddat», the marriage relationship shall be re-established automatically.
3. Once the «Iddat» is over, dissolution of the marriage becomes final.

Chapter IV.

«I D D A T»

Article 48

Duty to observe «Iddat»

The woman is obliged to observe the period of «Iddat» in the following cases:

a) dissolution (faskh) of a consummated marriage;
b) divorce (talaq) revocable or irrevocable following a consummated marriage;
c) death or where the death of the husband is presumed even if it took place before consummation of marriage.

Article 49

When «Iddat» is not mandatory

Iddat except in the case provided for in paragraph (c) of article 48, is not mandatory if marriage has not been consummated.

Article 50

Duration of «Iddat»

1. The Iddat of a woman who is not pregnant lasts 90 days.
2. The Iddat of a pregnant woman lasts until delivery or abortion.
3. The Iddat of a widow lasts 4 months and 10 days.
4. The «Iddat» begins from the date of divorce (talaq) or death of the husband or dissolution (faskh) of marriage.

Article 51

«Iddat» after divorce or death

1. In case the death of the husband occurs while the woman is observing the Iddat following a revocable divorce, she shall pass to the Iddat for death and the previous period shall not be calculated.

2. If the husband dies during the period in which the woman is observing Iddat following an irrevocable divorce, she shall complete the Iddat for divorce and shall not pass to the Iddat for death.

Article 52

Maintenance during Iddat period

The husband shall continue to provide maintenance to his wife during the period of Iddat, if he was previously obliged to do so.

BOOK II.

CHILDREN AND MAINTENANCE

Part I.

RELATIONSHIP

Chapter I.

PATERNITY

Article 53

Pregnancy period

The minimum pregnancy period for the the purpose of establishing paternity is 180 days and the maximum is one solar year.

Article 54

Presumption and evidence of paternity

1. Paternity of the child is established if the following conditions exist:

a) If the marriage contract lasts more than the minimum pregnancy period;

b) If there is no proof of the impossibility for the spouses to have met because of an actual impediment which lasted from the time of the contract to the time of the child-birth or that such impediment occurred after the contract and lasted twelve months or more. In case the impediment ceases, the pregnancy period is calculated as from the day the impediment ceased.

2. If any of the above conditions does not exist, paternity is not proved, unless acknowledged by the father.

Article 55

Paternity during and after «Iddat»

1. If a woman during her period of «Iddat» following a revocable divorce gives birth to a child, the paternity of the child is established in the man who divorced her.

2. If she delivers a child after the period of «Iddat» is considered to be over because its term has expired or because the woman admits that the period is over, paternity is considered to be proved if the woman has given birth to her child within 180 days of the presumed date of the expiration of the Iddat; in such cases unless the husband proves otherwise, child-birth is considered to be an evidence of his return to his wife (Raj'aa) and the Iddat period shall continue.

Article 56

Paternity following irrevocable divorce or husband's death

Paternity is proved if the woman delivers during the period of Iddat following an irrevocable divorce or after the husband's death, provided that the child's birth occurs within twelve months of the date of the irrevocable divorce or the husband's death.

Article 57

Paternity in defective marriage

In an irregular marriage the paternity is proved if the woman delivers the child before the relation is interrupted or separation takes place after six months and within twelve months of the actual conjugal intercourse.

Article 58

Paternity not established

Paternity is not established if it is decisively ascertained that the man is sexually impotent or cannot procreate children due to a physical or pathological impediment; in case of a controversy, the court shall avail itself of the opinion of experts.

Chapter II.

MATERNITY

Article 59

Proof of maternity

The maternity of a child is established in the woman who gives birth to the child; establishment of maternity entails all its material and moral consequences.

Chapter III.

ACKNOWLEDGEMENT OF PATERNITY

Article 60

Acknowledgement of paternity

Acknowledgement of paternity, even if it is made at the point of death, in favour of a person of unknown descent, establishes the paternity of the child in that man, on condition that the difference of age between the two allows it.

Article 61

Consent to acknowledgement

Acknowledgement of paternity or maternity establishes descent on condition that the person in favour of which the acknowledgement is made consents to it, and the difference of age between the two allows it.

Chapter IV.

CUSTODY OF MINOR (HADANA)

Article 62

Mandatory breast-feeding

The mother is obliged to suckle her child if it is not possible tc foster it differently for whatever reason.

Article 63

Custody (hadana)

Custody of a child is the proper rearing, educating, cultivating good morals in it without prejudice to the specific rights of the guardian.

Article 64

Fitness for custody (hadana)

1. The mother is entitled to the custody (hadana) of her male child until he has completed the age of ten years and of her female child until she has attained the age of fifteen years. In case of her marriage to another man she may continue with custody of the children provided that the father consents.

2. If the mother dies or there is a legal impediment, the custody of the child shall pass to the father or some other relative.

3. In the absence of the above mentioned persons or in case of their unfitness, the Court may entrust the child's custody to another person or a relative of the child taking into account the interest of the child.

4. The court may restore the custody of the child to the mother or any of her relatives on the disappearance of the legal impediment.

Article 65

Requisites of the person entitled to custody

The person who has the custody of the child must look after the interests of the child and should be of age and of sound mind.

Article 66

Choice of the person entitled to custody

In case there are more relatives in the same degree entitled to the custody of the child, the court shall choose the one who is in the best interests of the child.

If they are more than one the one who does not take any remuneration shall be chosen.

Article 67

Marriage of the person having custody

If the person having custody of the child gets married with a person other than a relative of the child, he/she loses his/her right to the custody. This provision shall not however apply to the widow having the custody of her child.

Article 68

Right of custody cannot be waived

The right of custody of the child cannot be waived but it extinguishes with the termination of the period of custody.

Article 69

Termination of period of custody

1. The right of a woman to custody of the child ceases when the girl reaches 15 years of age and the boy 10 years.
2. The court may allow continuation of the custody of the boy or girl beyond the above fixed limit whenever it believes that they are not in a position to get along by themselves.
3. The period of custody terminates when the child attains the age of 18 years.

Article 70

Extension of the period of custody

If at the end of the period of custody the minor, whether male or female, is ill or insane, it is his/her mother who shall take care of him/her and keep him/her, even if he/she has surpassed the age of majority. If there is no mother, the Court may entrust him/her to the person it deems to be the most suitable for the purpose.

Article 71

Taking the child abroad

1. The person who has custody of the child may not take him/her outside the Republic except with the consent of the guardian.
2. In case of disagreement between the person who has the custody of the child and the guardian, the court shall decide.

Article 72

Right of access to the child

1. Where the child lives with one of its parents the one who has custody shall not deny the other the right of access to the child or from keeping the child for a short period.
2. Such a right belongs only to parents. In case of controversy, the Court shall decide.

Article 73

Suspension of right to custody

Force may not be used to have access to the child. However, if the parent who has custody denies the other the right of access the court may deprive the former of his right to custody for a period not exceeding one month.

Part II.

MAINTENANCE

Article 74

Right to maintenance

Relatives, with the exception of ascendants and descendants, shall not be entitled to maintenance.

Article 75

Maintenance of children

1. If the child has no property of its own it shall be maintained by its parents who are well of.
2. Maintenance of children by their parents shall continue.
a) In the case of daughter until she gets married or being of age she has found a job which enables her to maintain herself.
b) In the case of the son until he attains the age of majority.
3. If the son has attained the age of majority but is unable to work because of some illness or because he must pursue his studies the parents shall be obliged to maintain him.
4. During the period of maintenance children are subject to parental authority.
5. In case of dissolution of the marriage contract, for whatever reason, maintenance of children shall be regulated according to articles 31 and 32 of this law.

Article 76

Maintenance of parents

1. A wealthy son or daughter is obliged to maintain his/her parents if they are not in a position to maintain themselves.
2. If the children are more than one they shall contribute towards the maintenance of their parents in proportion to their incomes.

Article 77

Rights and duties of the poor

1. A poor person not obliged to maintain others is the person who does not own property the value of which is more than that which is considered according to customs to be sufficient for his legitimate needs and the needs of his children, for the settlement of debts over-due or about to mature nor has he any profession or any other source of income from which he could meet the exigencies mentioned herein.

2. A poor person entitled to be maintained by others is the person who is unable to procure for himself what is necessary for his maintenance or who is not able to procure enough for his living.

Article 78

Rights and duties of the well-to-do

1. A well-to-do person obliged to provide maintenance is the person who owns propery the value of which is more than that which is considered according to customs to be sufficient for his own legitimate needs and the needs of his children, for the settlement of debts overdue or about to mature or who has a profession or any other source of income the proceeds of which are more than what is needed to cover the exigencies mentioned herein.

2. Immovable property and capital if they are the only sources of income shall not be considered to be in access of the needs mentioned in the preceding paragraph; nor the residential house whose value or area is just enough for him and his children to live in.

Article 79

Order of priorities

1. If more than one person are entitled to maintenance and the person obliged to maintain them is not able to provide maintenance to all of them priority shall be given to the wife, then the children and then the parents.

2. If more than one person is legally obliged and all of them are able to fulfil their obligation, each of them shall pay his/her share to each of the entitled persons.

3. If they are not able to pay all the shares in respect of maintenance, the provision of para. 1 above shall apply.

Article 80

Commencement and termination of maintenance

Maintenance shall commence as from the date on which the right accrues. It shall be considered a debt and shall not extinguish unless satisfied or remitted.

Article 81

Compensation

Maintenance of the son by his father shall not be compensated by the debt owed to the father by the foster-mother.

BOOK III.

GUARDIANSHIP, CURATORSHIP AND POWER OF ATTORNEY

Part I.

GUARDIANSHIP

Article 82

Guardian

Guardianship of the minor and his property shall be vested in the father, his mother, his grandfather and then the legatees of one of them.

Article 83

Duties of the Guardian

The guardian shall look after the minor's property, administer it and take care of its disposal according to this law.

Article 84

Prohibition to donate the property of the minor

The guardian may not donate the property or its proceeds belonging to the minor. Should anybody donate the property or the processed thereof, the act shall be null and void and the donar shall be liable for it.

Article 85

Disposal of the property of a minor

The guardian may not use the minor's property to his own advantage or to the advantage of his wife or her relatives except upon the authorization of the Court. Likewise the guardian may not mortgage the minor's property against his/her personal debt.

Article 86

Loan of property

The guardian may not loan the property of a minor nor borrow it except with the consent of the Court.

Article 87

Termination of guardianship

Guardianship shall terminate when the minor attains majority, provided that the Court does not order its continuation.

Article 88

Withdrawal or limitation of guardianship

If the minor's property is endangered due to mal-administration by the guardian or due to any other reason, the court may withdraw the guardianship or limit its scope.

Article 89

Restitution of minor's property

The guardian or his heirs are bound to restitute to the minor his property at the moment he attains the age of majority; as regards the property which they have disposed of, they shall be liable to account for the value the property had at the moment it was disposed of.

Part II.

CURATORSHIP AND POWER OF ATTORNE.

Chapter I.

CURATOR OF THE MINOR

Article 90

Requisites of the curator (Wasi)

The curator shall be legally competent, suitable to the task and of good reputation. In particular, a person cannot be appointed as curator if:

a) he has been convicted for a serious offence;
b) he is known for his bad habits or has no legal means of subsistence;

c) he has been previously deprived of the minor's guardianship, or has been deprived from the curatorship of the minor;

d) he has a judicial dispute with the minor; or if his ascendants, descendants or wife have a judicial dispute with the minor; or in case there is hostility between him and the minor or, when there are grounds for fear that the interests of the minor might be jeopardised.

Article 91

Appointment of curator

Both the father and the grandfather may choose a curator (wasi) for the minor, and may at any time withdraw their appointment. The curatorship is to be referred to the Court for confirmation.

Article 92

Appointment of curator by the Court

If a curator has not been chosen for the minor, it is the court that shall appoint him.

Article 93

Appointment of more than one curator

1. In case of necessity it is lawful to appoint more than one curator. In such cases they shall act jointly and not separately.
2. In case of conflict among the curators, the dispute shall be referred to the court for decision.

Article 94

Duties of curator

The curator receives the minor's property in order to administer it and take care of it. In doing so he shall take care of it in such a way as if he were a paid attorney.

Article 95

Limitations to the activities of curator

The curator is forbidden to perform the following unless with the consent of the Court:

a) to dispose off the minor's real estate or mortgage it;
b) to dispose off movables or cash money, with the exception of what is necessary for the ordinary administration thereof;
c) to borrow or lend money which belongs to the minor;
d) to rent real estate belonging to the minor for a period of more than three years, if not to the advantage of the minor;
e) to rent real estate belonging to the minor for a period of more than one year from the date he attains the age of majority;
f) to waive rights and claims, and to accept judgements which could be appealed against on good grounds, or withdraw a well grounded appeal after lodging it;
g) to rent the minor's property to his advantage or his wife, or any of their relatives or a person for whom the curator in an agent.

Article 96

Custody of cash money

The curator shall deposit in the name of the minor with the court or with a Bank according to the Court's directions all the money he has in his custody, after putting aside the amount fixed for maintenance and the sum which the court deems enough to cover administration expenses. This must be done within fifteen days of the date on which the money was received, and the curator shall not withdraw anything from that sum unless with the authorization of the Court.

Article 97

Accounts of Administration

The curator shall present to the competent court accounts of his administration corroborated by documents within the 31st December of each year.

Article 98

Remuneration to curator

The curator is not entitled to any remuneration. But the court may, at the curator's request, allot him a salary or grant him remuneration for a specific work.

Article 99

Termination of curatorship

The curator's task shall terminate:
a) when the minor attains the age of majority, provided that the court does not decide that the curator should continue:
b) if he is discharged or his resignation is accepted;

c) if he is deprived of the exercise of civil rights, or his absence is ascertained, or he dies;
d) when the child dies.

Article 100

Discharge of Curator

The Curator shall be discharged:
a) if any of the impediments mentioned in article 90 exists, even if existed at the time of his appointment;
b) if he mismanages the property or neglects it, or his continuance in office is not in the minor's interest.

Article 101

Delivery of goods

The curator shall within thirty days of the termination of his curatorship deliver the property which is in his custody to the competent court.

Article 102

Delivery of goods by heirs or agent

If the curator dies or is deprived of the exercise of legal rights or is considered as missing, his heirs or his agent are obliged to deliver the minor's property to the competent court.

Chapter II.

CURATORSHIP OF PERSON UNDER DISABILITY

Article 103

Custody of person under disability and appointment of curator

1. The custody of a person who has attained the age of majority but is insane or an idiot shall take effect from the day the disability is discovered. Similar decisions shall be taken in case of foolish persons or persons under fatiuity. The custody of the above mentioned persons may be revoked by the competent court.

2. The court shall appoint a curator of the property of the person under disability. The rules provided for the curatorship of minors shall apply to the management of the property of the person under disability.

Article 104

Expenses for medical treatment

The expenses needed for medical treatment of the person under disability shall have priority over every other expense.

Article 105

Curator of the person under disability

Curatorship of the person under some disability shall be entrusted upon the father, then the grandfather and then the person chosen by the court.

Chapter III.

POWER OF ATTORNEY FOR MISSING PERSON

Article 106

Missing persons

The court shall appoint an attorney for the missing person, when his whereabouts are not known for more than one year and where such absence causes prejudice to the interests of the missing person .i e.:

a) if he has disappeared and it is not known whether he is alive or dead;
b) if he has no fixed residence or domicile, or if he is domiciled outside the Republic and it is impossible for him to attend personally to his business or to control the person to whom he has delegated the administration of his property.

Article 107

Acceptance of power of attorney

If the missing person has left behind a general agent, the Court shall confirm him, if the necessary requisites for curatorship are existent in him otherwise it shall appoint some other person.

Article 108

Termination of absence

Absence terminates with the cessation of its cause or when the death of the missing person becomes known or is declared by a judgement or decree issued by the competent organs.

Article 109

Rules applicable

The provisions established for the curatorship of minors shall also apply to the powers of attorney for a missing person.

Chapter IV.

ADOPTION

Article 110

Condition for Adoption

Persons whose parents are unknown may be adopted by Somali citizens and other permanent residents of age. The ages of the parties must be such as to admit of the adopter being the father of the person adopted. Persons of known parents may be adopted provided that they retain the name of their father.

Article 111

Procedure of adoption

Whoever intends to adopt a person who fulfils the conditions laid down in the preceding article shall submit an application to the District Court of the place in which he resides, stating his irrevocable desire to adopt that person and proving that he is in possession of sufficient means to take good care of him.

Article 112

Court Proceedings

The Court after considering the application on its merits and having heard the person to be adopted shall decide to allow or reject the application. Such decision shall be taken after having heard the opinion of the Attorney General which shall however not be binding.

Article 113

Transmission of decision to the Registrar's Office

In case the application is allowed, it shall be transmitted to the Registrar's Office of the local Government for entering on it, the dates of birth of the person to be adopted and the adopting person. Thereafter the name of the adopting person is added to the name of the person adopted.

Article 114

Effects of Adoption

Adoption creates between the person adopted and the adopting person a relationship similar to filiation. If the adopting person has other children, the adoptee shall share equally with them the rights and duties towards the adopting parent.

Article 115

Supervision of minor

may be legalised by a decree of the President of the Supreme Revolutionary Council.

Article 116

Exceptional cases

In exceptional cases which are not provided for in this law, adoption may be legalised by a decree of the President of the Supreme Revolutionary Council.

BOOK IV.

TESTAMENTARY SUCCESSION

Part I.

THE WILL (WASIYYAT)

Chapter I.

DEFINITION OF WILL AND CONDITIONS OF VALIDITY

Article 117

Definition

The will consists of directions for disposition of one's property after death.

Article 118

Form

The will may be made orally or in writing with words indicating such intention. If the testator is unable to speak or to write, the will may be made through understandable signs.

Article 119

Conditions

For a will to be lawful it must have been made voluntarily. Moreover its aim should not be inconsistent with the law. If the testator is not a muslim, his will is valid on condition that it is not illegal according to the law to which the testator is subject to and does not endanger the Public Order.

Article 120

Conditional Bequest

1. Without prejudice to the provisions of the preceding article, a conditional bequest is valid. If the condition is lawful it shall be observed, as long as the interest it intends to safeguard persists. The condition shall not be observed if it is unlawful or if the interest which it intends to produce dies away.

2. A lawful condition is that which involves an interest of the testator or the lagatee or any other person, provided that it is not contrary to or inconsistent with the law.

Article 121

Requisites of the testator

The testator must be of age, of sound mind and free to choose, even though under guardianship because of foolishness or fatuity (safah and ghaflat). The will of an apostate is valid on condition that he reverts to Islam, otherwise it shall be invalid.

Article 122

Requisites of the legatee

1. The legatee must fulfil the following conditions:
a) he/she is known;
b) he/she has the capacity to possess;
c) he/she exists at the time the will is made, if he has been nominated.

2. If he/she has not been nominated it is not necessary that he/she be existent at the time the will is made or at the time of the testators death.

Article 123

Charitable legacy

It is lawful to bequeath in favour of places of worship, charitable institutions or other pious or cultural organizations, provided that the bequest is not contrary to the principles of the Islamic law (Shariat).

The legacy is spent to meet the cost of the buildings, needs of the poor and other activities carried out by such institutions, provided that it is not contrary to the custom or the direcions contained in the will do not establish otherwise. It is lawful to bequeath in the name of God and charitable deeds without indicating any specific place; thus the legacy is spent in beneficence.

Article 124

Contitions for legacy

The legacy is subject to the following conditions:

a) is something that can be transferred hereditarily, or that can be lawful negotiated;

b) is something which is useful;

c) is something existing at the time the will is made and belonging to the testator, in case it has been specifically indicated.

Article 125

Legacy of a specified share

The will establishing for the legatee a specified share of property is valid. If such a share is higher than one third of the inheritance, the will shall not be enforced as to the part exceeding the one third, unless with the consent of the heirs.

Article 126

Will by an insane person

The will by an insane person shall be invalid if his insanity lasts until death. Equally invalid shall be the will where the lagatee does not survive the testator.

Article 127

Nullity of the will if the bequeathed goods perish

The will is not valid if the bequeathed goods perish before they pass into the hands of the legatee.

Article 128

Will of a fool or a person under fatuity

The will of a person under disability because of foolishness or fatuity is valid.

Article 129

Bequest to testator's murderer

A legatee, who causes the death of the testator is disentitled to take the legacy if he caused the death intentionally.

Chapter II.

REVOCATION, ACCEPTANCE AND REFUSAL OF BEQUEST

Article 130

Will when revocable

The testator may revoke his will totally or partially, expressly or tacitly. The will shall be considered revoked if any step or action taken, whether customary or otherwise, suggests such revocation. Thus when the testator destroys the subject matter of his bequest or completely alters its nature, a revocation may be inferred.

Article 131

Acceptance or refusal of bequest

The will is subject to acceptance by the legatee expressly or tacitly after the testator's death. If the legatee is an unborn child (janin) or a minor or a person under judicial disability, acceptance or refusal shall be expressed by the person who is the guardian of the property. For charitable institutions, organization and foundations, acceptance shall be expressed by their legal representatives. If there are no legal representatives, the legacy shall pass to such bodies even without acceptance.

Article 132

Acceptance or refusal expressed by heirs

If the legatee dies before expressing his acceptance or refusal, it shall be expressed by his heirs.

Article 133

Time-limit for acceptance or refusal

It is not necessary that acceptance or refusal should immediately follow the testator's death. However, the will shall be invalid if, after having been officially notified, the legatee does not express in writing his acceptance or refusal within ninety days.

Article 134

Partial acceptance or refusal

If the legatee accepts a part of the legacy and refuses some other part of it, the legacy shall be valid as to the accepted part and be invalid as to the refused part. If some of the legatees accept the legacy and some of them refuse it, the legacy is valid for those who have accepted it and invalid for those who have refused it.

Article 135

Refusal expressed before or after the testator's death

If the bequest is refused before the testator's death it is valid. But it is invalid if it is refused after death.

Chapter III.

THE LEGATEE AND THE LEGACY

Article 136

Bequest in favour of existent and inexistent persons

A bequest in favour of a person not in existence is not valid. But it is valid if it includes existent and inexistent persons, provided that the inexistent ones could be counted. If one of the legatees is found at the time of the testator's death or after, the proceeds of the inheritence shall belong to him alone, until the others are found: from the moment they are found they also shall take part in the partition of the proceeds. Each of them shall take a share in the proceeds together with the person who was existent before, until the possibility of the existence of some other entitled person ceases. In that event both the proceeds and the capital shall bceome the property of all of them and the share of the person who dies becomes part of his inheritance.

Article 137

Legacy of proceeds only

If the legacy bequeathed to the persons indicated in the preceding article consists of proceeds only, and none of the legatees is found at the time of the testator's death, such proceeds shall belong to the testator's heirs. If at the time of the testator's death or afterwards one of the entitled persons is found, the proceeds shall belong to him and to all those who may be found after him, until their progressive disappearance; then the proceeds shall pass on to the testator's heirs.

Article 138

Legacy to persons without specification and limitation

A legacy in favour of persons who are not named and their number not limited is valid. In such cases only the needy among them shall be entitled to the legacy with the exclusion of the others. Partition of the legacy is entrusted to the executor of the will, who shall either make a general partition or a partition in equal shares. The executor of the will shall be appointed by the deceased, failing which he shall be appointed by the court or the person nominated by the court.

Article 139

Bequest to an unborn person

1. A bequest to a child in womb is valid if its existence was known at the time when the will was made and if it is born alive within six months of the date of the will. If the mother is not married it is necessary that the child be born alive within twelve months, otherwise the bequest shall be invalid.

2. If the bequest is in favour of an unborn child of a named person, it is valid if the conditions for the establishment of paternity of the unborn child in that person are fulfilled and the proceeds from the legacy are suspended until the child is born alive; the legacy shall then become the property of the child.

Article 140

Birth of twins or more children

It a woman gives birth to twins or more children at the same time or within less than six months the legacy shall be divided among them in equal shares, unless the will provides otherwise. If one of the children is born dead, the living one or the living ones are entitled to all the legacy.

Article 141

Bequest in favour of heirs and limitations to legacy

1. A bequest to an heir is not valid unless the other heirs consent to it.

2. It is lawful to bequeath in favour of a person who is not an heir if it does not exceed one third of his estate. If the legacy exceeds one third, it is not valid unless the other heirs consent thereto after the testator's death and provided that they have the capacity to donate and understand what they are consenting to.

Article 142

Bequest by indebted person

It is lawful for the debtor whose property is wholly absorbed by debts to leave a will. But the will shall not be executed unless after remission of the debts. If the remission is only partial or the debt does not absorb all the property, the will shall be executed as to the part of the property which is left after payment of the debt.

Article 143

If debts do not exceed the property

If the debt does not absorb all the property and it has been paid wholly or partially from the legacy, the legatee may claim the sum corresponding to the part of the debt which has been paid from the one third of inheritance after payment of the debt.

Article 144

Legacy by person who has credits

If the legacy consists of a fixed amount of money or property and the inheritance consists of credits or some invisible property, the legatee is entitled to receive one third of it and the remaining part shall go to the heirs; and of whatever later comes into light the legatee is entitled to one third until he receives all his share in the legacy. However, if the legacy can be satisfied from the inheritance it shall be accounted for.

Article 145

Legacy of a generic share

If the legacy refers to a generic share of the inheritance, and there is in such share a credit or some invisible money, the legatee is entitled to his share of what is visible in the inheritance and of anything which later on might come into light.

Article 146

Legacy of goods which are lost or are due to others

If the legacy refers to a specific part of the inheritance or a particular type of goods and they are lost or are due to some other person, the legatee shall not receive anything. If they are lost or due to others only partially, the legatee shall receive one third of what is left if it is possible, otherwise he shall receive his entitled share of one third proportionately.

Chapter IV.

LEGACY OF FACILITIES

Article 147

Legacy of a facility

1. If the legacy consists of a facility to a nominated person for a fixed period of time, of which the beginning and end are mentioned, the legatee is entitled to enjoy it for that period. If such period ends before the death of the testator, the legacy is considered as not made. If it ends after, the legatee is entitled to enjoy the facility for the period after the testator's death. If the period is specified but its commencing date is not mentioned, it is supposed to commence from the date of the testator's death.

2. If the legacy consisting of facility to a specific person is for ever, or for his life time or the period is without limitation, the legatee is entitled to enjoy the facility for all his life.

Article 148

Legacy of facility to unlimited number of persons

1. If the legacy consisting of a facility is in favour of an unlimited number of persons who cannot be differentiated, or it is in favour of a charitable institution and the period is not limited, the legatee is entitled to enjoy the facility for ever.

2. If the legacy is in favour of unlimited number of persons who can be differentiated, the legatees are entitled to enjoy the utility, until their final disappearance.

3. If the legacy is for a period of time whose beginning and end are indicated or if the period is fixed but its beginning and end are not indicated, the rules provided in the preceding article shall apply.

Article 149

Utilization different than that mentioned in the will

If the property whose facility has been bequeathed allows a utilization different from that which has been indicated in the will, the legatee may accordingly utilize it as he deems most suitable, on condition that the property whose facility has been bequeathed to him is not damaged.

Article 150

Profit or proceeds of legacy

If the legacy consists of profit or proceeds from a property, the legatee is entitled to them if they were existing at the time of the testator's death and he shall be entitled to whatever accrues thereafter provided that it does not conflict with the intentions of the testator.

Article 151

Taxes due on the legacy

1. If the legacy of a facility is in favour of someone and the ownership of the property is bequeathed to some else, taxes due on the property and obligations related to the facility shall be the responsibility of the person to whom the bequest of the facility is made.
2. The legacy of a facility shall cease with the death of the legatee whether he has enjoyed it totally or partially; it shall also cease with the purchase by the legatee of the property whose facility he had received, with the waiving of his right in favour of the testator's heirs with or without a reward, and with the passing on of the property bequeathed to others.

Part II.

INHERITANCE

Chapter I.

GENERAL PRINCIPLES

Article 152

Death of testator and right to inheritance

The right to inheritance is acquired with death of the testator or with the declaration of death by the court or by the decree of the Ministry of Defence according to the provisions of article 45 of this law.

Article 153

Heir to be alive

1. In order that the right to inheritance may be established it is necessary to ascertain that the heir was alive, even for a moment, after the death of the testator or after the declaration of his death by a court or a decree.

2. An unborn child is entitled to the inheritance if the conditions provided under article 170 of this law are fulfilled.

Article 154

Death at the same time

If two persons die at the same time and it cannot be ascertained who died first, no inheritance rights shall arise amongst them.

Article 155

Deductions from inheritance

1. Before succession takes place, the following deductions shall be made from the inheritance in the order mentioned herein:

a) What is enough for the funeral expenses of the deceased;
b) What is needed to pay off mortgages or other bonds due on the inheritance;
c) What is needed to pay the debts of the deceased;
d) Legacies within the limits provided for by the law.

All property that may remain after deduction of the above mentioned charges is heritable property.

2. If there are no heirs, the inheritance goes to the State Treasury.

Article 156

Loss of right to inherit

A person who causes the death of another shall not inherit his property.

Article 157

Titles of inheritance

Titles of inheritance are:

1. Relationship;
2. Marriage.

Chapter II.

SHARES OF INHERITANCE

Article 158

Equal rights of the two sexes

In conformity with the principles of the 1st and 2nd Charter of the Revolution females and males shall have equal rights of inheritance.

Article 159

Persons entitled to inheritance

1. After the deductions mentioned in article 155 of this law, persons entitled to inheritance are:
Husband and wife, their children, grandchildren of both sexes, father, grandfathers, mother, grandmothers, full brothers and sisters, brothers and sisters of father and brothers and sisters of mother.
2. If there is no one of the above-listed entitled presons, or if after the partition of the inheritance something of it is left, it goes to the State Treasury.

Article 160

Shares belonging to spouses

1. The widower or widow is entitled to half of the estate in case there are no children or grandchildren.
2. If there are children or grandchildren the widower or widow is entitled to one fourth of the estate.
3. If there are more than one widow, her share of one half or one fourth as specified above shall be equally divided amongst them.
4. If the persons entitled to inheritance are; one of the spouses, he mother and the father, the spouse shall inherit one half of the estate and remaining part of the estate shall be divided equally amongst the mother and the father.

Article 161

Children and grand children

1. If the deceased leaves an only son or daughter, he/she inherits the whole estate.
2. If there are more sons and daughters, the inheritance shall be divided equally among them irrespective of their sex.
3. If there are no children, but there are grand children whether male or female the inheritance shall be divided among them according to the provisions of para. 1 and 2 above.

Article 162

Father's and grandfather's share

1. If the deceased person leaves only his father, he shall inherit the whole estate.

2. If along with the father there are also children and grandchildren of the deceased the father is entitled to one sixth share and the remaining estate shall be divided equally among the children and grand children.

3. The grandfather shall inherit his share according to para. 1 and 2 of this article.

Article 163

The mother and the grandmother

1. If the deceased person leaves only his mother, she inherits the whole estate.

2. If along with the mother there are also children and grand children of the deceased whether male or female, the mother is entitled to a one sixth share of the estate and the children and grandchildren shall divide equally among themselves the remaining part of the estate.

3. The grandmother shall inherit in the manner provided by paras. 1 and 2 of this article.

Article 164

Shares of Brothers and Sisters

1. Il the deceased leaves only a brother or a sister, full or half, he/she shall inherit the whole estate.

2. If there are more brothers or sisters, the estate shall be divided among them in equal shares.

3. If together with one or more brothers or sisters there is the grandfather or grandmother, the latter shall inherit one sixth share of estate and the rest shall be divided equally among them.

Chapter III.

EXCLUSION FROM INHERITANCE

Article 165

Exclusion (Hajb)

1. Exclusion (Hajb) means when a person has the capacity to inherit but does not inherit due to the presence of another heir whose right to inherit has priority over his.

2. Exclusion may be total or partial.

Article 166

Person barred from inheritance

A person barred from inheritance due to some impediment cannot exclude others from inheritance.

Article 167

Father and mother, grandfather and grandmother

1. The father excludes the grandfathers and grandmothers. The mother excludes the grandmothers and grandfathers.

2. «Grandmother» means the mother's mother and the father's mother in the first degree. «Grandfather» means the father's father and the mother's father in the first degree.

Article 168

Brothers and Sisters

Brothers and sisters, full or half are excluded by the father and the mother, the deceased's children and grand children.

Article 169

Children and grandchildren, the spouses, Father and grandfathers, mother and grandmothers

1. The deceased's children exclude the grandchildren.

2. The children or the grandchildren deminish the shares of the following if they exist: Husband and wife, the father, the grandfather, the mother and the grandmother.

Chapter IV.

CHILD IN THE WOMB AND MISSING PERSON

Article 170

Inheritance by the child in the Womb and its conditions

1. The share belonging to a child in the womb shall be reserved when the partition of the inheritance takes place.

2. If a man dies leaving his wife or a woman observing her period of Iddat, the child in her womb shall not inherit unless it is born alive within twelve months from the date of death or separation.

3. The child in the womb shall not inherit from persons other than its father unless any of the following conditions exists:

a) that it is born alive within twelve months of the date of the death or separation in case the woman is in the period of her «Iddat» due to her husband's death or rescission of the marriage relationship and the testator dies during the period of «Iddat».
b) that it is born alive within nine months of the date of the testator's death, if the marriage relationship existed at the time of the death.

Article 171

Reservation of the share of the missing person and its conditions

1. The share to which the missing person is entitled to shall be reserved and if he re-appears alive he shall take it.
2. If the missing person has been declared dead by the court or by means of a decree of the Ministry of Defence, and he belonged to the Armed Forces according to the provisions of article 45 of this law, the share reserved for him shall be distributed among the persons entitled to the inheritance at the time of the testator's death. If the missing person reappears alive after his death has been declared he shall recover his share from the persons who had previously received it.

Part III.

FINAL PROVISIONS

Article 172

Penal provision

Whoever violates the provisions of this law for which no penalty is specifically provided and the offence is not serious, shall be punished with imprisonment from six months to three years and fine from Sh. So. 1000 to Sh. So. 3000.

Article 173

Regulations and interpretation

The Secretary of State for Justice and Religious Affairs shall issue Regulations for the proper implementation and interpretation of this law.

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KU DHAQAN XAFIIS DAWLADEED

FAAFIN RASMI AH
الجريدة الرسمية

EE JAMHURIYADDA DIMUQRADIGA SOMALIYA
لجمهورية الصومال الديمقراطية

Sannadka 3aad Muqdisho, 31 Maarso 1975 L. 1, R. 3 ku celin

Laanta Faafinta Rasmiga ah ee Madaxtooyada Golaha Sare ee Kacaanka

FAAFIN BIL SOO BAXA جريدة شهرية

QIIMADU: waa 5 shilin lambar waliba — RUKUNKA: Sanadli waa Sh. 100 Somaliya gudeheeda — dibaddedana waa Shs. 300. Rukunka la weydiisto waqtiga loo gooyey wuxuu ka bilabmaa 1 Janayo. Qiimaha qortitaanku F. R. halkii sadar iyo waxii ka yar waa 2 laba shilin — Rukunka iyo qoritaanku waxaa la weydiistaa Laanta Maamulka Faafinta Rasmiga ah — Lacagta waxaa lagu bixinayaa Xafiiska Canshuraha ee Wasaaradda Lacagta

KOBNIIN

BOGGA KOWAAD

SHARCI

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BOGGA LABAAD

XEER
W. M.

BOGGA SADDEXAAD

TALOOYIN ISGAARSIIN OGEYSIIS IYO WAXII LA MID AH
W. M.

Madbacada Dwladda — Muqdisho

SAXID KU SAABSAN SHARCIGA QOYSKA

NUQULKA AF SOOMAALIGA

(Errata Corrige)

Qodobka 3aad ee ku yaal bogga koowaad, kuna saabsan Sharciga Qoyska Lambarkiisu yahay 23 soona baxay 11kii Jannaayo 1975 ee lagu faafiyey Faafinta Rasmiga ah ee Dawladda L. 1 R 3 ee 8dii Maarso 1975, waxaa loo akhrinayaa isagoo la saxay sida soo socota:

Qodobka 3aad

Xeerka ku saabsan Qoysaska wuxuu dhaqan gelayaa marka laga bilaabo 11kii Jannaayo 1975.

Ereyga u dhigan «Dhimaha» ee ka mid ah cinwaanka qodobka 4aad ee ku qoran bogga labaad ee sharciga Qoyska, waxaa loo akhinayaa «Dhismaha».

Qaybta 3aad ee ka mid ah qodobka 22aad ee Sharciga Qoyska ee kor lagu soo sheegay, kuna yaal bogga Siddeedaad, waxaa loo akhrinayaa sida soo socota:

3. Guurka waxba kama jiraan haddii uusan ahayn midka lagu caddeeyey qod. 7aad, xaaladahaan soo socda:

a) Haddii eysan dhammeyn labada dhinac kartidooda (capacità dei contraenti)

b) Haddii guurku uu dhacay marag la'aan.

t) Haddii ey naagtu tahay sida lagu caddeeyey qodobka 10, 11, 12 iyo 14 ee Xeerkaan;

j) Haddii ey naagtu ku xiran tahay nin kale ama ey ku jirto ciddadeeda.

Ereyga u dhigan «Xaga» ee ka mid ah cinwaanka qodobka 72aad ee ku qoran bogga Sagaal iyo tobnaad ee Sarciga Qoyska, waxaa loo akhrinayaa «Xaqa».

Isla qodobka 72aad, sadarkiisa Afraad ee ku qoran bogga Sagaal iyo tobnaad ee Sharciga Qoyska, waxaa loo akhrinayaa sida soo socota:

Haddii taas leysku af garan waayo, waxaa go'aanka iska leh garsooraha.

Sadarka kowaad iyo kan labaad ee ka mid ah qaybta 1aad ee qodobka 77aad ee ku qoran bogga labaatanaad ee Sharciga Qoyska, waxaa loo akhrinayaa sida soo socota:

1. Qofka aan waxba haysan oo ey waajib ku ahayn inuu masruuf bixiyo, waa qof aan haysan maal qiimihiisu ayna ka badneyn waxa lagama maarmaanka ah.

Qodobka 88aad ee ku qoran bogga labaatan iyo laba ee Sharciga Qoyska, waxaa loo akhrinayaa sida soo socota:

Qodobka 88aad

Ka qaadista ama dhimidda loo yeeli karo wilaayadda

Haddii xoolaha uu leeyahay ilmaha aan qaan gaarin ey khatar ku jiraan ayadoo qofka waliga u ah si xun u maamulay ama ey jiraan sabab kale, Maxkamadda way u bannaan tahay in ay ka qaado ama ey dhinto wilaayadda.

Sadarka lixaad ee ka mid ah qodobka 131aad ee Sharciga Qoyska, kuna qoran bogga soddon iyo koow, waxaa loo akhrinayaa sida soo socota:

sa. Ogolaashada ku saabsan Jimiciyadaha ama Ururada aan danaha gaar-

Xarafka j) iyo x) ee ka mid ah qodobka 99aad ee Sharciga Qoyska, kuna yaal bogga Labaatan iyo afar iyo Labaatan iyo shan waxaa loo akhrinayaa xuruuftaas si isdabajoog ah oo ah t) iyo j) sidaan soo socota:

t) markii uu waayo awodda wadidda (capacità di agire) ama la ogaaday inuu maqan yahay ama uu geeriyooday.

j) ama ilmahu uu dhinto.

Sadarka saddexaad iyo kan sagaalaad ee ka mid ah qodobka 136aad ee Sharciga Qoyska, kuna qoran bogga soddon iyo laba, waxaa loo akhrinayaa sida soo socota:

Sadarka 3aad:

oo kooban. Haddii la helo qof ka mid ah dadka loo dardaarmayo isla mar-

Sadarka 9aad:

qof kale oo xaq u leh inuu la qaybsado. Markaasoo kale wixii laga dar-

Sadarka labaad ee ka mid ah qodobka 137aad ee Sharciga Qoyska, kuna qoran bogga soddon iyo laba, waxaa loo akhrinayaa sida soo socota:

dobka hore, waxaa laga dardaarmayna ay yihiin manfaca keliya oo aan la

Sadarka Afraad iyo kan Shanaad ee ka mid ah qaybta 2aad ee qodobka 139aad ee Sharciga Qoyska, kuna qoran bogga soddon iyo saddex, waxaa loo akhrinayaa sida soo socota:

waxa laga dardaarmayo ilaa iyo intii uu ka dhalanayo isagoo nool, markaasaana la siinayaa faa'iidada.

Sadarka saddexad ee ka mid ah qodobka 144aad ee Sharciga Qoyska, kuna qoran bogga soddon iyo afar, waxaa loo akhrinayaa sida soo soeota:

loo dardaarmay wuxuu xaq u leeyahay saddex meelood meel, wixii soo harana wa-

Qodobka 148aad ee ka mid ah Sharciga Qoyska, kuna yaal bogga soddon iyo shan, waxaa loo akhrinayaa sida soo socta:

Qodobka 148aad

Isticmaalka looga dardaarmo dad aan la koobin

1. Haddii loo dardaarmo wax la isticmaalo dad aan la koobin oo aan la maleyneyn in ay dhammaanayaan ama looga dardaarmo jimciyad waxa wanaagsan ka shaqeysa eyna muddadu waligeed soconayso ama aan la xadidin, dadka loo dardaarmay waxay xaq u leeyihiin isticmaalkaas weligood.

2. Haddii loo dardaarmo dad aan la koobin oo la maleynayo iney dhammaanayaan eyna muddadu soconayso ama aan la xadidin, dadka loo dardaarmay waxay xaq u leeyihiin isticmaalkaas ilaa iyo intay ka dhammaadaan.

3. Waxaa lagu dhaqmayaa nidaamka uu dhigaayo qodobka hore, haddii dardaaranku leeyahay muddo la yaqaano bilowgeeda iyo dhammadkeeda ama muddo go'an aanse la caddayn bilowgeeda iyo dhammaadkeeda.

Qodobka 151aad ee ka mid ah Sharciga Qoyska, kuna qoran bogga soddon iyo shan iyo soddon iyo lix, waxaa loo akhrinayaa sida soo socota:

Qodobka 151aad

Cashuurta lagu leeyahay sheyga laga dardaarmayo iyo manfacadiisa

1. Haddii looga dardaarmo qof isticmaalka wax looga dardaarmay qof kale wixii cashuur ah oo lagu yeesho waxa laga dardaarmay iyo waajibaadka ku xiran in la isticmaalo waxay saaran yihiin qofka looga dardaarmay in uu isticmaalo.

2. Isticmaalka laga dardaarmay wuxuu dhacayaa markuu dhinto qofka loo dardaarmay intuusan dhamaysan isticmaalka dhammaantiis ama qaarkiis, wuxuu kaloo ku dhici karaa in qofka loo dardaarmay isticmaalka gato wixii isticmaakooda looga dardaarmay, iyo inuu isagu u dhaafo xaqiisa dadka dhaxlaya qofka dardaarmay, ama wax ha ka qaato ama yuusan ka qaadane, iyo in dad kale ay yeeshaan wixii laga dardaarmay.

Sadarka koowaad ee ka mid ah qobolka 152aad ee Sharciga Qoyska, kuna qoran bogga soddon iyo lix, ereyga u dhigan «mutaystay» waxaa loo akhrinayaa sidaan «mutaystaa».

Qodobka 160aad ee ka mid ah Sharciga Qoyska, kuna qoran bogga soddon iyo toddoba, waxaa loo akhrinayaa sida soo socota:

Qodobka 160aad

Qaybta ay leeyihiin laba isqaba

1. Ninka iyo naagta isqaba koodii jooga wuxuu qaadanayaa xoolaha dhaxalka barkood, haddii ayna ilmo jirin ama ilmahaas ilmahooda.

2. Haddii ilmo jiraan ama ilmahaas ilmahooda midkii hara ninka ama naagta isqaba wuxuu qaadanayaa afar meelood meel.

3. Naagaha laga dhintay haddey mid ka badan yihiin, qaybta ay leeyihiin oo ah nus ama afar meelood meel sida kor lagu soo caddeeyey waxaa loogu qaybinayaa sinaan.

4. Haddii dhaxalku ku kooban yahay laba isqaba midkood, hooyada iyo aabaha kaliya, labada isqaba midkood wuxuu xaq u leeyahay xoolaha dhaxalka barkood, wixii soo harana waxaa loo qaybinayaa hooyada iyo aabaha sinaan.

Qaybta 3aad ee ka mid ah Qodobka 163aad ee Sharciga Qoyska, kuna qoran bogga soddon iyo siddeed, waxaa loo akhrinayaa sida soo socota:

3. Ayeeyada waxay wax ku dhaxlaysa sida lagu caddeeyey qaybta 1) iyo 2) ee qodobkaan.

Qodobka 165aad ee ka mid ah Sharciga Qoyska, kuna qoran bogga soddon iyo sagaal, waxaa loo akhrinayaa sida soo socota:

Qodobka 165aad

Ka xijaabidda

1. Ka xijaabidda dhaxalka waxaa weeye markii uu qof awood u leeyahay inuu wax dhaxlo, hase yeeshe waxba ma dhaxli karo, sababtoo ah in uu jiro qof kale oo xaq uga leh dhaxalka.

2. Ka xijaabidda dhaxalka waxey u qaybsantaa: mid reebid ah iyo mid ka dhimid ah.

Ereyga u dhigan «Nin kasta» oo ku yaal sadarka koowaad ee qodobka 173aad ee Sharciga Qoyska, kuna qoran bogga afartanaad, waxaa loo akhrinayaa sidaan «Qof kasta».

XEER Madaxweynaha JDS, L. 29 ee 10 Febraayo 1981. Xeer Nidaamiye lagu fulinaayo Xeerka Qoyska.

MADAXWEYNAHA JDS

ISAGOO ARKAY: Dastuurka J.D.S.

ISAGOO ARKAY: Sharciga Lambarkiisu yahay 23 soona baxay 11.1.1975;

ISAGOO AQOONSAN: Baahida loo qabo in la soo dejiyo Xeer Nidaamiye lagu fulinaayo Sharciga Lambarkiisu yahay 23 soona baxay 11.1.1975.

ISAGOO TIXGELINAYO: Go'aankii Golaha Wasiirada

WUXUU SOO SAARAYAA

XEER NIDAAMIYAHA SOO SOCDA:

Qodobka 1aad

Ahmiyadda ballanqaadka uu u leeyahay Guurka

1) Heshiiska Guurka waxaa ka horeeya ballanqaad dhexmara Labada Qof oo isguursaneysa.

2) Labada dhinac waa ay u bannaan tahay in ay ka noqdaan ballanqaadkaas, hase yeeshee waxaa waajib ku ah dhinaca ka baxay in uu u sheego kan kale si asluub leh, iyadoo laga dhowrsanaayo in aysan dhibaato ka imaan.

3) Haddii Ninku uu iskiisa isaga baxo ballanqaadka, isagoo horey u bixiyey yarad kuma doodi karo in loo soo celiyo yaradkaas.

4) Haddii ay Gabadhu sabab u tahay jebinta ballanqaadka, dhinaca kale wax u bannaan tahay inuu ku doodo soo celinta yaradda ama wixii dhibaata ah ee gaaray.

Qodobka 2aad

Haweenka aan loo Ballanqaadi karin Guur

1) Haddii ay dhacdo in Gabar horey ugu jirtay ballanqaad Guur in ay Guursato nin kale iyadoo aan u sheegin dhinaca kale sida horey loogu sheegay Qodobka 1aad ee Xeer Nidaamiyaha, Guurkaasu waa ansaxayaa Sharci ahaan, hase yeeshee waxaa waajib ku ah iney ka magdhowdo dhinaca looga baxay ballanqaadka dhibaatada ballan ka bixiddu u keento.

2) Marnaba ma bannaana in la Guursado Naag nin kale ku xiran ama Sharcigu uu Guurkeeda xaaraantimeeyey ama cidda tirsaneysa.

Qodobka 3aad

Diiwaangelinta Guurka

1) Guur kasta oo aan soo marin Tillaabooyinka Diiwaangelinta ee lagu caddeeyey Qodobka 5aad ee Xeerka Qoyska loo aqoonsan maayo Rasmi ahaan Waajibaadka iyo Xuquuqda uu leeyahay.

2) Taas lagu dabbiqi maayo reer Miyiga ka fog meelaha Diiwaangelinta ilaa ay u suurtowdo in ay Diiwaangeliyaan.

3) Maxkamadda iska leh Diiwaangelinta waxaa weeye Maxkamadda Degmada ee awoodda u leh meesha Guurku ka dhacay ama Maxkamadda Degmada ee ugu dhow meeshaas.

4) Guddoomiyayaasha Maxkamadda Rafcaanka waxay awood Kormeer ah ku leeyihiin Maxkamaddaha Degmooyinka ee Gobolkooda si ay u hubsadaan in arrimahaas loo hirgeliyey si waafaqsan Sharciga.

Qodobka 4aad

GUUR LABAAD

1) Guur Labaad ee aan soo marin Shuruudda lagu

caddeeyey Qodobka 13aad ee Xeerka Qoyska waxba kama jiraan, haddii ninku Naagtii hore uu qabo.

2) Haddii uu dhaco Guur Labaad wuxuu noqonayaa mid la mid ah Xukunka Guurka Faasidka ah ama kan aan dhammeyn ee lagu xusay qaybta 4aad ee Qodobka 22 ee Xeerka Qoyska.

3) Marka Nin iyo Naag Labaad ay isla Guri galaan oo ay isu tagaan, waxyaabaha ka dhalan kara oo ah kuwa lagu sheegay qaybta 2aad ee Qodobka 23aad ee Xeerka Qoyska waa la aqoonsan yahay.

4) Degaanta Ijtimaaciga ah ee lagu oggolaan karo Guurka Labaad waxaa loola jeedaa meelaha xuduuda ah ama Miyiga ah.

Qodobka 5aad

DA'DA GUURKA

1) Haddii Wiilka ama Gabadha ay dhammeystaan 18 Sano, mid kasta wuxuu ikhtiyaar u leeyahay inuu Nolohiisa maamulo u guursadana si madax bannaan.

2) Gabadha Da'deedu gaarto 16 Sano ee aan dhammeysan 18 Sano waa ay u bannaan tahay in ay gasho heshiis Guur ah haddii uu oggolaado Weligeeda.

3) Maxkamaddu waxay awood u leedahay inay Fududeyso da'da Guurka ee Labada qof ee isguursaneysa haddii ay jirto dan Culus ama jirro Takhtar uu soo caddeeyey.

Qodobka 6aad

Weliga Gabadha aan qaan gaarin

1) Darajooyinka Wilaayadda ee lagu caddeeyey Qaybta 1aad ee Qodobka 19aad ee Xeerka Qoyska Garsooruhu waa inuu u raacaa sida ay u kala horreeyaan dadka Wilaayadda xaqa u leh.

2) Haddii Waligu diido in la Guursado Gabadha aan qaan gaarin ee uu Waligu u yahay ama uu meel ka

fog joogo, Wilaayaddu waxay u wareegeysaa Garsooraha jooga meeshaas ama qof Rukhsad ka haysata Wasaaradda Garsoorka iyo Arrimaha Diinta si loogu Nikaaxiyo Ninka ay ikhtiyaarkeeda u doorato.

Qodobka 7aad

Ka Cararka Awoodda Walinnimada

1) Guurka Gabadha dhammaysatay 16 Sano oo iyadoo raalli ah raacda nin ay dooratay ayna isku Guursadaan meel u jirta 100 Km meesha uu Weligeedu deggan yahay waa ansaxayaa Sharci ahaan.

2) Hase yeeshee Ninka Gabadha aan qaan gaarin kala dhuuntay ama kala cararay awoodda Waligeeda waa la ganaaxayaa sida uu Sharcigu qabo.

3) Haddiise la bixidda Gabadha ay ku jirto khatalaad ama khasbid si kastaba ha ku dhacdee, Guurkaas waxba kama jiraan, Ninkii ku kacana waa in lala tiigsadaa Xeerka Ciqaabta.

Qodobka 8aad

GUURKA QOFKA WAALAN

Marka keliya ee Qofka waalan lco oggol yahay Guurka waxaa weeye marka Guddi Takhaatiir ah day cad deeyaan in uu baahi lagama maarmaan ah u qabo Guurka xagga Caafimaadka awgeed.

Qodobka 9aad

GUURKA AAN DHAMMEYN AMA FAASIDKA AH

Guurka aan dhammeyn ama Faasidka ah waxaa loola jeedaa sida lagu sheegay qaybta 4aad ee Qodobka 22 ee Xeerka Qoysska Guurka uu ka dhiman yahay Shardi la doonayo in laga helo oo lagu sheegay Xeerkaan kana duwan kuwa lagu caddeeyey qaybta 3aad ee Qodobkaas.

Qodobka 10aad

WADA DEGGANAANSHAHA QOYSKA

1) Afada waxaa waajib ku ah iney Ninkeeda raacdo kana dambeeyso u hogaansanaatana, maxaa yeelay isaga ayaa reerka odey u ah oo ay mas'uuliyad buuxda ka saaran tahay.

2) Haşe yeeshee haddii ay jirto dhibaato ama waxyaabo ka hor istaagaya Sharci ahaan in ay afadu u raacdo Ninkeeda meesha uu rabo wax eed ah oo ka soo gaaraya ma jirto xaqeedana ma gefeyso.

3) Haddii ay Labada isqabą ku wada noolaaneyn si nabad ah oo ay is nacaan ama midkood naco kan kale la iskuma khasbi karo haddii aan laga dhexdhalin karin heshiis.

4) Qofkii Labadooda ka mid ah ee gefkiisu sabab u noqdo Furidda ama Fasakha wuxuu Garsooruhu la tiigsanayaa Qodobka 44 ee Xeerka Qoyska.

Qodobka 11aad

FURITAANKA LAGU HESHIIYO

1) Marka Ninka iyo Xaaskiisu ku soo heshiiyaan Maxkamadda Dibeddeeda iney isfuraan, markaasoo kale Maxkamaddu waa iney ka oggolaataa inuu rido Dalaaqa iyadoo la dhowrayo qaybta 4aad ee Qodobka 36aad ee Xeerka Qoyska.

2) Heshiiska ku saabsan isfuridda Labada dhinac oo ay Maxkamaddu oggolaaneyso waa in lagu qoraa Warqad Rasmi ah iyagoo ku soo caddeynaya iney meel ısla dhigeen Saddexdaan arrimood oo soo socda:

b)—Aayatiinka Ilmaha haddii ay leeyihiin.

t)—Meherka Afada.

j)—Alaabta Guriga.

3) Haddii ay caddaato in Ninku Naagta uu ku furay si qarsoodi ah oo aan Maxkamadi ogey waxba kama jiro Furitaankaas aan Sharciga waafaqsaneyn

4) Haddii Ninku doono in uu soo rajceysto xaaskiisa uu ku furay hal ama Laba Dalqadood waa in uu rajceyesiga kaga hor dhawaaqaa Garsooraha hortiisa iyadoo Naagtu og tahay, joogtana meesha lagu soo rajceysanayo.

Qodobka 12aad

FASAKHA

1) Haddii Maxkamadi kala Fasakhdo nin iyo Naagtiisa, Fasakhaasu wuxuu yeelanayaa xukunka Dalaaqa rajciga ah.

2) Haddii Ninka iyo Naagta la kala Fasakhay ay doonaan in ay isu soo noqdaan muddada ciddada dhexdeeda waxaa shardi ah in Naagtu raali ka tahay rajceysiga iyadoo joogta, ikhtiyaarna leh.

Qodobka 13aad

FASAKHA MAS'RUUF LA'AAN DARAADEED

Muddada ku saabsan maqnaashaha Ninka ama xukun ku dhacay ee lagu xusay xarafka b) iyo d) ee Qodobka 43aad ee Xeerka Qoyska kama reebayso inay weydiisato Fasakha masruufka la'aanta daraadeed haddii aysan awood u lahayn iney is-masruufto.

Qodobka 14aad

DHAQAN GELID

Xeer Nidaamiyaha wuxuu dhaqan gelayaa markii uu saxiixo Madaxweynaha J.D.S. iyo Wasiirka Garsoorka iyo Arrimaha Diinta, waxaana lagu soo saarayaa Faafinta Rasmiga ah ee Dawladda Soomaaliyeed.

MUQDISHO, 10 FEB. 1981

Jaalle S. Gaas Maxamed Siyaad Barre

MADAXWEYNAHA JDS

WASIIRKA GARSOORKA IYO ARRIMAHA DIINTA

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اذا ولد حيا لاثنى عشر شهرا على الاكثر من تاريخ الوفاة او الفرقة .

٣ ـ ولا يرث الحمل غير ابيه الا فى الصورتين الاتيتين : ـ

أ ـ ان يولد حيا لاثنى عشر شهرا على الاكثر من تاريخ الموت او الفرقة ان كانت امه معتدة موت او فرقة ومات المورث اثناء العدة.

ب ـ ان يولد حيا لتسعة اشهر على الاكثر من تاريخ وفاة المورث ان كان من زوجية قائمة وقت الوفاة .

مـــادة ١٧١

ما يوقف المفقـود وشروط التصـرف فيه

يوقف للمفقود من تركة مورثه نصيبه فيها ، فاذا ظهر حيا اخذه ، وان حكم بوفاته او صدر قرار من سكرتير الدولة للدفاع باعتباره ميتا رد نصيبه الى من يستحقه من الورثة وقت موت مورثه .

فان ظهر حيا بعد الحكم بوفاته اخذ نصيبه من أيدى الورثة .

مـــادة ١٧٢

احكـام جنائيـة

كل من يخالف احكام هذا القانون التى لم يرد لها عقاب معين فـــى هذا القانون ما لم تكون المخالفة جريمة اكثر جسامة يعاقب بسجن مـــن ستة اشهر الى ثلاثة سنوات وبغرامة من الف شلن صومالى الى ثلاثة آلاف شلن صومالـــى .

مـــادة ١٧٣

لوائح تنظيميـة

لسكرتير الدولة للعدل والشئون الدينية سلطة اصدار لوائح تنظم وتفسر تطبيق أحكام هذا القانون .

مـــادة ١٦٦
مـوانـــع الارث

المحروم من الارث لمانع من موانعه لا يحجب أحدا من الورثة .

مـــادة ١٦٧
الاب والجد ــ الام والجـــدات

١ ــ يحجب الاب الجد من جهته والجد الذى يتصل بالميت من جهـــة الام . كما يحجب الجدة التى تتصل بالميت من جهته ومن جهة الام وتحجب الام الجدات كما تحجب الجد الذى يتصل بالميت من جهتها ومن جهة الاب.

٢ ــ يتصد من الجد اب الاب وأب الام . ويتصد من الجد أم الام وأم الاب .

مـــادة ١٦٨
الاخوة والاخوات

يحجب الاخوة والاخوات من اى جهة كل من الاب والام والفروع .

مـــادة ١٦٩

الاولاد واولاد الابن او اولاد البنت ــ احد الزوجين ــ الاب والجد ــ الام والجدات

١ ــ يحجب كل من الابن والبنت ابن الابن وبنت الابن وابن البنـــت وبنت البنت .

٢ ــ يحجب الفروع وفروعهم ايضا كل من الاب والام والجد والجدة والزوج او الزوجة حجب نقصان.

البـــاب الرابـــع
الحمـــل والمفقـــود

مـــادة ١٧٠
توريث الحمل وشـــروط التوريـــث

١ ــ يوقف للحمل نصيبه من التركة بعد تقسيمها .
٢ ــ اذا توفى الرجل من زوجة او عن معتدته فلا يرثه حملهـــا الا

او انثى — فان الاب يستحق السدس والباقى من التركة يأخذه الفروع الموجودون ويقسم بينهم بالتساوى .

٣ — يعامل الجد فى الارث كمعاملة الاب المبينة فى الفقرتين (١) و (٢) من هذه المادة .

مادة ١٦٣

فروض الام والجدة

١ — اذا ترك الميت والدته فقط فان الام الوحيدة ترث كل التركة.

٢ — اذا كان مع الام ولد أو ولد الابن أو ولد البنت — ذكر او انثى — فان الام تستحق السدس ، والباقى من التركة يأخذه الفروع الموجودون ويقسم بينهم بالتساوى .

٣ — تعامل الجدة فى الارث كمعاملة الام المبينة فى الفقرتين (١) و (٢) من هذه المادة .

مادة ١٦٤

فروض الاخوة والاخوات للابوين او لاب او لام

١ — اذا ترك الميت اخا أو اختا فقط سواء اكان لابوين او لاب أو لام فان الاخ الوحيد أو الاخت الوحيدة ترث كل التركة .

٢ — اذا كان الاخوة أو الاخوات اكثر من واحد فانهم يرثون كل التركة ويقسم بينهم بالتساوى .

٣ — اذا كان مع الاخ أو الاخت من اى جهة جد او جدة فان الجد او الجدة يستحق السدس ، والباقى من التركة يأخذه الاخوة والاخوات ويقسم بينهم بالتساوى .

الباب الثالث

الحجب

مادة ١٦٥

الحجب

١ — الحجب هو أن يكون لشخص اهلية الارث ولكنه لا يرث بسبب وجود وارث آخر .

٢ — الحجب ينقسم الى حجب حرمان وحجب نقصان .

مـــادة ١٥٩
أصحاب الحق فى الارث

١ ــ بعد استقطاع الحقوق المتعلقة بالتركة وفقا للمادة ١٥٦ مـــن هـــذا القانـــون .
فان الحق فى الميراث يكون للاشخاص الاتية : ــ
الزوج والزوجة والابناء والبنات وابناء وبنات الابن وابناء وبنـــات البنت والاب والام والجد والجدة ، والاخوات والاخوة لابوين او لاب أو لام.
٢ ــ اذا لم يوجد من سبق ذكرهم او بقى شىء لا مستحق لـــه تستولى عليه خزانة الدولة .

مـــادة ١٦٠
فروض الـــزوج والزوجـــة

١ ــ يكون لكل من الزوج والزوجة النصف عند عدم وجود الولد او ولد الابن او ولد البنت .
٢ ــ ويكون لكل منهما الربع اذا وجد ولد وولد الابن او ولد البنت.
٣ ــ اذا كانت الزوجات اكثر من واحدة يقسم نصيبهن الذى هـــو النصف أو الربع بالتساوى فيما بينهم .
٤ ــ اذا انحصـــر الارث فى أحد الزوجين والام والاب يستحـــق أحد الزوجين النصف والباقى يقسم بين الام والاب بالتساوى .

مـــادة ١٦١
فروض الاولاد وأولاد الابن واولاد البنـــت

١ ــ اذا كان الوارث واحدا او واحدة من الابناء او البنات يرث كل التركة .
٢ ــ اذا كان الاولاد سواء اكان ذكورا او اناثا اكثر من واحد يقسم التركة بينهـــم بالتســـاوى .
٣ ــ اذا كان الورثة اولاد الابن أو اولاد البنت فانهم يرثون التركـــة بالطريقة المبنية فى الفقرتين (١) و (٢) من هذه المادة .

مـــادة ١٦٢
فروض الاب والجـــد

١ ــ اذا ترك الميت والدة فقط فان الاب الوحيد يرث كل التركة .
٢ ــ اذا كان مع الاب ولد او ولد الابن أو ولد البنت ــ ذكـــرا

مـــادة ١٥٤

المـوت فـى وقـت واحد

اذا مات اثنان فى وقت واحد او لم يعلم ايهما مات اولا ، فـــلا استحقاق لاحدهما فى تركة الاخر سواء كان موتهما فى ظرف واحد او فى ظروف مختلفة .

مـــادة ١٥٥

استقطاعـات واجبة علـى التركة

١ ــ يؤدى من التركة بحسب الترتيب الاتى : ــ

أ ــ ما يكفى لتجهيز الميـت ،

ب ــ ما يتعلق بعين التركة من رهون او أية التزامات اخرى تكـون التركة مثقلة بهـا .

جـ ــ ديـون الميـت .

د ــ ما أوصى به فى الحدود المنصوص عليها فى القانون ، ويوزع مـا بقى بعد ذلك على الورثة .

٢ ــ فاذا لم يوجد ورثة ، آلت التركة الى الخزانة العامة .

مـــادة ١٥٦

قتل المـورث

اذا قتل الوارث مورثه منع من الميراث .

مـــادة ١٥٧

أسبـاب الارث

اسباب المـيراث هى : ــ

أ ــ القرابـــة ،

ب ــ الزوجيـــة .

البـاب الثانـى

الارث بالفرض

مـــادة ١٥٨

مساواة المراة والرجل فى المـيراث

عملا بالمبادىء العامة الواردة فى البيان الاول والثانى للثورة فـــان المراة والرجل متساويان فى الارث .

مـــادة ١٥٠
الغلـــة او الثمرة

اذا كانت الوصية بالغلة او الثمرة ، فللموصى له الغلة او الثـمرة القائمة وقت موت الموصى ، وما يستجد منها مستقبلا ما لم تدل قرينـــة على خلاف ذلك .

مـــادة ١٥١
الضرائب المفروضة على العين ومنفعتها الموصى بها

١ ــ اذا كانت الوصية لمعين بالمنفعة ولآخر بالرقبة ، فان ما يفرض على العين من الضرائب وما يلزم لاستيفاء منفعتها يكون على الموصى لـــه بالمنفعـــة .

٢ ــ وتسقط الوصية بالمنفعة بوفاة الموصى له قبل استيفاء المنفعة الموصى بها كلها او بعضها ، وبشراء الموصى له العين التي اوصى لـــه بمنفعتها وباسقاط حقه فيها لورثة الموصى بعوض او بغير عوض وباستحقاق العين لاخرين .

القسم الثانـــى
المـــيراث

البـــاب الاول
احكام عامـــة

مـــادة ١٥٢
موت المـورث والحق فى المـــيراث

يستحق الارث بموت المورث او باعتباره ميتا بحكم القاضـــى ، او بصدور قرار سكرتير الدولة للدفاع بمقتضى المادة «٤٥» من هذا القانون.

مـــادة ١٥٣
شـــرط حيـــاة الوارث

١ ــ يجب لاستحقاق الارث تحقق حياة الوارث بعد موت المورث ولو بلحظة ، او بعد صدور القرار باعتباره ميتا .

٢ ــ ويكون الحمل مستحقا للارث اذا توافر فيه ما نص عليه فـــى المادة (٧٠) من هذا القانـــون .

به او استحق لاخرين فلا شيء للموصى له . واذا هلك بعضه او استحق لاخرين اخذ الماوصى له ما بقى منه ان كان يخرج من ثلث التركة والا كان له فيه بقدر الثلث .

الباب الرابع
الوصية بالمنافع

مادة ١٤٧
الوصية بالمنفعة

١ — اذا كانت الوصية بالمنفعة لمعين مدة معلومة البدء والنهاية استحق الموصى له المنفعة فى هذه المدة .

فاذا انقضت المدة قبل وفاة الموصى اعتبرت الوصية كأن لم تكن . واذا انقضت بعده استحق الموصى له المنفعة بعد وفاة الموصى . واذا كانت المدة مبينة القدر غير معلومة البدء بدأت من وقت وفاة الموصى.

٢ — اذا كانت الوصية بالمنفعة لمعين مؤبدة او لمدة حياته او مطلقة، استحق الموصى له المنفعة مدة حياته .

مادة ١٤٨
الوصية بالمنفعة لاشخاص غير محصورين

١ — اذا كانت الوصية بالمنفعة لاشخاص غير محصورين لا يظن انقطاعهم ، او لجهة من جهات البر وكانت مؤبدة او مطلقة استحق الموصى لهم المنفعة على وجه التأبيد.

٢ — فاذا كانت الوصية مؤبدة او مطلقة لاشخاص غير محصورين يظن انقطاعهم ، استحق الموصى لهم المنفعة الى انقراضهم .

٣ — تطبق احكام المادة السابقة اذا كانت الوصية لمدة معلومة البدء والنهاية او لمدة معينة القدر وغير معلومة البدء والنهاية .

مادة ١٤٩
الانتفاع بالعين او استغلالها على وجه غير الذى وصى به

اذا كانت العين الموصى بمنفعتها تحتمل الانتفاع او الاستغلال على وجه غير الذى أوصى به ، جاز للموصى له ان ينتفع بها ويستغلها على الوجه الذى يراه بشرط عدم الاضرار بالعين الموصى بمنفعتها .

مـــادة ١٤١

الوصيـــة للوارث ـــ حدود الوصيـــة

١ ـــ لا تصح الوصية للوارث الا اذا اجازها باقى الورثة .

٢ ـــ وتصح لغير الوارث فى حدود ثلث التركة ، فان زادت علـــى الثلث فلا تنعقد فى الزيادة الا اذا اجازها الورثة بعد وفاة الموصى ، وكانوا من اهل التبرع عالمين بما يجيزونه .

مـــادة ١٤٢

وصـــية المديـــن

تصح وصية المدين المستغرق ماله بالدين ولا تنفذ الا ببراءة ذمتـــه منه . فان برئت من بعضه او كان الدين غير مستغرق نفذت الوصية فـــى الباقى بعد وفاء الدين .

مـــادة ١٤٣

الديـــون غـــير المستغرقـــة

اذا كان الدين غير مستغرق واستوفى كله او بعضه من الموصـــى به كان للموصى له أن يرجع بقدر الدين الذى استوفى فى ثلث الباقى من التركة بعد وفاء الدين .

مـــادة ١٤٤

وجود اموال للموصـــى خارج التركة

اذا كانت الوصية بقدر محدد من النقود او بعين وكان فى التركـــة دين او مال غائب ، فان خرج الموصى به من الحاضر من التركة استحقـــه الموصى له ، والا استحق منه الثلث وكان الباقى للورثة ، وكلما حضر شىء استحق الموصى له ثلثه حتى يستوفى حقه .

مـــادة ١٤٥

الوصية بسهم شائـــع

اذا كانت الوصية بسهم شائع فى التركة وكان فيها دين او مـــــال غائب استحق الموصى له سهمه فى الحاضر منها . وكلما حضر شىء استحق سهمـــه فيه .

مـــادة ١٤٦

التركة الهالكـــة او المستحقـــة لآخريـــن

اذا كانت الوصية بعين من التركة او بنوع من أنواعها فلك الموصى

فان وجد احد من الموصى لهم عند موت الموصى او بعده كانت الغلة للموجود وحده الى ان يوجد غيره فيشترك معه فيها .

وكل من يوجد منهم يشترك فيها مع من يكون موجودا وقت ظهور الغلة الى حين اليأس من وجود مستحق آخر فتكون العين والغلة لهم جميعا ويكون نصيب من مات منهم تركة عنه .

مادة ١٣٧
الوصية بالمنافع وحدها

اذا كانت الوصية لمن ذكروا فى المادة السابقة بالمنافع وحدها ولم يوجد منهم احد عند وفاة الموصى كانت لورثة الموصى .

وان وجد مستحق حين وفاة الموصى او بعدها كانت المنفعة له ولكل من يوجد بعده من المستحقين الى حين انقراضهم فتكون المنفعة لورثة الموصى .

مادة ١٣٨
الوصية لمعينين غير محصورين

تصح الوصية لمعينين غير محصورين ويختص بها المحتاجون منهم ، ويترك امر توزيعها لاجتهاد من له تنفيذ الوصية دون التقيد بالتعميم او المساواة ومن له تنفيذ الوصية هو من يعينه المتوفى ، وان لم يوجد فالمحكمة او من تعينه لذلك .

مادة ١٣٩
الوصية للحمل

١ — تصح الوصية للحمل اذا علم وجوده وقت الوصية وولد حيا لستة شهور من وقت الوصية ، فاذا لم تكن الام فراشا لزوج فيشترط ان يولد الحمل حيا لاقل من اثنى عشر شهرا والا بطلت الوصية .

٢ — واذا كانت الوصية لحمل من معين اشترط لصحة الوصية مع ما تقدم ثبوت نسبه من ذلك المعين وتوقف غلة الموصى به الى ان ينفصل الحمل حيا فتكون له .

مادة ١٤٠
ولادة طفلين او اكثر

اذا جاءت الحامل فى وقت واحد او فى وقتين بينهما اقل من تسعة اشهر بولدين حيين او اكثر كانت الوصية بينهم بالتساوى الا اذا نصت الوصية على خلاف ذلك .

الموصى ، فاذا كان الموصى له جنينا او قاصرا او محجورا عليه يكون قبول الوصية او ردها ممن له الولاية على ماله .

ويكون القبول عن الجهات والمؤسسات والمنشآت ممن يمثلها قانونا. فان لم يكن لها من يمثلها لزمت الوصية بالموت دون توقف على القبول .

مـــادة ١٣٢

قبول الورثـــة او ردهم للوصية

اذا مات الموصى له قبل قبول الوصية او ردها قام ورثته مقامه فى ذلـــك.

مـــادة ١٣٣

الوقت المحـــدد لقبول الوصيـــة او ردهـــا

لا يشترط قبول الوصية او ردها ان يكون فور موت الموصى . ومـــع ذلك تبطل الوصية اذا ابلغ الموصـــى له باعلان رسمى ، وطلب منـــه قبولها او ردها ومضى على علمه بذلك تسعون يوما كاملة دون ان يجيب كتابة بالقبول او الـــرد.

مـــادة ١٣٤

قبـــول او رد بعض الوصيـــة

اذا قبل الموصى له بعض الوصية ورد البعض الآخر لزمت الوصيـــة فيما قبل وبطلت فيما رد .

واذا قبلها بعض الموصى لهم وردها الباقون لزمت بالنسبة لمن قبلهـــا وبطلت بالنسبـــة لمـــن ردوا .

مـــادة ١٣٥

رد الوصية قبل او بعد وفـــاة الموصـــى

لا تبطل الوصية بردها قبل موت الموصى . وتبطل اذا ردت بعـــد موتـــه .

الباب الثالـــث

الموصى له والموصـــى بـــه

مـــادة ١٣٦

الوصية للموجـــود او المعدوم مـــن الاشخاص

لا تصح الوصية للمعدوم ولكن تصح لمن يشمل الموجود والمعـــدوم من اشخاص محصورين .

مـــادة ١٢٥

الوصية بقدر معلـــوم من المـــال

تصح الوصية باقرار الموصى له قدرا معلوما من المال .
ولا تنفذ فيما زاد على ثلث التركة الا باجازة الورثة .

مـــادة ١٢٦

بطـــلان وصية المجنون

تبطل الوصية بجنون الموصى جنونا مطبقا اذا اتصل بالموت . وكذلك تبطل بالنسبة للموصى له اذا مات قبل الموصى .

مـــادة ١٢٧

بطلان الوصية بهـــلاك الموصى به

تبطل الوصية اذا كان الموصى به معينا وهلك قبل الموصى له .

مـــادة ١٢٨

وصية السفيـــه او المغفـــل

لا تبطل الوصية بالحجر على الموصى للسفه او الغفلة .

مـــادة ١٢٩

قتـــل الموصـــى

يمنع من استحقاق الوصية ان يقتل الموصى له باختياره الموصى متـــى كان القاتل عاقـــلا .

البـــاب الثانـــى

الرجوع عن الوصيـــة وقبولهـــا وردهـــا

مـــادة ١٣٠

الرجـــوع عن الوصيـــة

يجوز للموصى الرجوع عن الوصية كلها او بعضها صراحة او دلالـــة، ويعتبر رجوعا عن الوصية كل فعل وتصرف يدل بقرينة او عرف علـــى الرجوع عنها ومن الرجوع دلالة كل تصرف يزيل ملك الموصى به .

مـــادة ١٣١

قبول الوصية او ردها

تلزم الوصية بقبولها من الموصى له صراحة او دلالة بعد وفـــاة

فاذا كان الشرط صحيحا وجبت مراعاته ما دامت المصلحة فيه قائمة. ولا يراعى الشرط ان كان غير صحيح أو زالت المصلحة المقصودة .

٢ ــ والشرط الصحيح هو ما كان فيه مصلحة للموصى او للموصى له او لغيرهما . ولم يكن منهيا عنه ولا منافيا لمقاصد الشريعة .

مادة ١٢١

الموصـــى

يشترط فى الموصى ان يكون بالغا عاقلا مختارا ولو كان محجورا عليه لسفه او غفلة ، وتصح وصية المرتد بشرط ان يعود الى الاسلام والا بطلت الوصية .

مادة ١٢٢

الموصى لـه

١ ــ يشترط فى الموصى له : ــ

أ ــ ان يكون معلوما .

ب ــ ان يكون اهلا للتملك ان كان شخصا.

جـ ــ ان يكون موجودا عند الوصية ان كان معينا .

٢ ــ فان لم يكن معينا لا يشترط ان يكون موجودا عند الوصية ولا وقت موت الموصى .

مادة ١٢٣

الموصى به فى وجوه الخير

تصح الوصية لاماكن العبادة او المؤسسات الخيرية او غيرها من جهات البر او المؤسسات العلمية ، مما لا ينافى مبادىء الشريعة الاسلامية وتصرف على مبانيها ومصالحها وفقرائها وغير ذلك من شئونها ما لم يتعين المصرف بعرف او دلالة . وتصح الوصية لله تعالى ولاعمال البر دون تعيين جهة وتصرف فى وجوه الخير.

مادة ١٢٤

شروط الموصى بـه

يشترط فى الموصى به : ــ

أ ــ أن يكون مما يجوز نقله بالارث او يصح ان يكون محلا للتعاقد.

ب ــ أن يكون مما يحل الانتفاع به .

جـ ــ ان يكون موجودا عند الوصية فى ملك الموصى ان كان معينا بالذات .

مـــادة ١١٦
حـــالات استثنائية

فى حالات استثنائية لا تدخل ضمن تقديرات هذا القانون ، يجـــوز اتخاذ قـــرار المتبنى بمرسوم لرئيس المجلس الاعلى للثورة .

الكتـــاب الرابع
الارث بوصيـــــة

القســـم الاول
الوصيـــة عند الوفـــاة

البـــاب الاول
تعريف الوصية وشروط صحتها

مـــادة ١١٧
تعريـــف

الوصية تصرف فى التركة مضاف الى ما بعد الموت .

مـــادة ١١٨
شكل الوصيـــة

تنعقد الوصية بالعبارة او بالكتابة بلفظ يدل عليها . فاذا كـــان الموصى عاجزا عن الكلام والكتابة انعقدت الوصية باشارته المفهومة .

مـــادة ١١٩
شـــروط صحـــة الوصيـــة

يشترط فى صحة الوصية الا تكون بغير رضاء الموصى والا يكـــون الباعث عليها منافيا لمقاصد الشارع .

واذا كان الموصى غير مسلم صحت الوصية الا اذا كانت محرمـــة فى شريعته والنظام العام .

مـــادة ١٢٠
الوصـــية المشروطـــة

١ ــ مع مراعاة حكم المادة السابقة ، تصح الوصية المعلقة بشـــرط او المقترنة به .

الفرق فى السن بين المبتنى والمتبنى يجب ان لا يقل من الفرق بين سن الاب والابن .

يجوز تبنى الاشخاص معروفى الاب مع وجوب الاحتفاظ بالانتساب الى الاب.

مادة ١١١

اجراءات التبنى

كل من يعتزم تبنى شخص تتوفر فيه الشروط المنصوص عليها فى المادة السابقة عليه ان يتقدم بطلب الى قاضى الناحية التى يوجد فيها الشخص مع ابداء رغبته التى لا يمكن العدول عنها فى التبنى واثبات الامكانيات المادية التى تؤهله للعناية به .

مادة ١١٢

قرار القاضى

يعد مراجعة الظروف المحيطة بطلب التبنى ، وبعد الاستماع كلما امكن الى الشخص الذى يراد تبنيه ، يتخذ القاضى قرارا بقبول الطلب او رفضه وذلك بعد الاستماع الى راى المدعى العام غير المقيد .

مادة ١١٣

ارسال قرار التبنى الى مكتب الاحوال المدنية

فى حالة قبول الطلب ، يرسل القرار الى مكتب الاحوال المدنية بالبلدية ويدون ذلك فى وثيقة ميلاد كل من المتبنى والمتبنى تبعا للتدوين، يضاف اسم المتبنى الى اسم المتبنى .

مادة ١١٤

اثر التبنى

ينشىء التبنى بين المتبنى والمتبنى علاقات مماثلة لتلك الناشئة عن البنوة ، اذا كان المتبنى اولاد آخرين . يشارك المتبنى معهم على قدم المساواة فى الحقوق والالتزامات نحو الوالد المتبنى .

مادة ١١٥

الاشراف

الاشراف على المعاملة التى يعامل بها المتبنى القاصر يكون للمدعى العام والقاضى الولى .

مـــادة ١٠٥

القوامـــة علـــى العجـــزة

تكون القوامة على ناقصى الاهلية لاب ثم الجد ثم لمن تختاره المحكمة.

الباب الثالـــث

الوكالة عن الغائب او المفقود

مـــادة ١٠٦

الغائـــب

تقيم المحكمة وكيلا عن الغائب الذى ينقضى على غيابه عام او اكثر وترتب على غيابه تعطيل لمصالحه وذلك فى الاحوال الاتية :

أ ـــ اذا كان مفقودا لا تعرف حياته او مماته .

ب ـــ اذا لم يكن له مسكن اومحل اقامة معلوم او كان مسكنه او محل اقامته خارج الجمهورية واستحال عليه ان يتولى شئونه بنفسه او ان يشرف على من ينيبه فى ادارة امواله .

مـــادة ١٠٧

تثبيت الوكيـــل

اذا ترك الغائب وكيلا عاما تحكم المحكمة بتثبيته متى توافرت الشروط الواجب توافرها فى الوصى ، والا عينت غيره .

مـــادة ١٠٨

نهايـــة الغيبـــة

تنتهى الغيبة بزوال مسبباتها او بموت الغائب او بصدور حكم او قرار الجهة المختصة باعتباره ميتا .

مـــادة ١٠٩

الاحكـــام واجبـــة التطبيـــق

تطبق على الوكالة عن الغائب الاحكام المقـــررة فى شان الوصايـــة علـــى القصـــر .

القســـم الثالـــث

مـــادة ١١٠

ـ شـــروط التبنـــى

يجوز تبنى الاشخاص المجهولى الوالدين ، من قبل مواطنين صوماليين او مواطنين مقيمين فى الوطن اقامة دائمة بلغوا سن الرشد .

مـــادة ١٠٠
عزل الوصـــى

يحكم بعزل الوصى فى الحالات الاتية : ــ
أ ــ اذا قام به سبب من أسباب عدم الصلاحية وفقا للمادة ٩١ ولو كان هذا السبب قائما وقت تعيينه .
ب ــ اذا اساء الادارة واهمل فيها او اصبح كوصى خطـرا علـــى مصلحة القاصر .

مـــادة ١٠١
تسليم اموال القاصـــر

على الوصى خلال الثلاثين يوما التالية لانتهاء الوصاية أن يسلـــم للمحكمة المختصة الاموال التى فى عهدته .

مـــادة ١٠٢
تسليم اموال القاصر من الورثة او نائب الوصى

اذا مات الوصى او فقد اهليته او اعتبر غائبا التزم ورثته او مـــن ينوب عنه بتسليم أموال القاصر الى المحكمة المختصة .

البـــاب الثانى
الوصاية على عديم الاهليـــة

مـــادة ١٠٣
الحجـــر وتعيـــين الوصـــى

١ ــ يحكم بالحجر على البالغ للجنون او العته من تاريخ وجـــود سبب عدم الاهلية كذلك يحكم بالحجر للسفه او الغفلة ، ولا يرفع الحجـــر الا بحكم من المحكمة .

٢ ــ وتقيم المحكمة على من يحجر عليه قيما لادارة امواله، وتتبـــع فى ادارة اموال المحجور عليه الاحكام المقررة فى الوصاية على القصر .

مـــادة ١٠٤
مصاريف الرعاية الطبيـــة

النفقات اللازمة للرعاية الطبية للمحجور عليه مقدمة على ما عداها.

د ـ ايجار عقار القاصر لمدة تمتد الى اكثر من ثلاث سنوات الا اذا كان ذلك فى صالح القاصر .

هـ ـ ايجار عقار القاصر لمدة تمتد ما بعد بلوغه سن الرشد لاكثر من سنة .

و ـ التنازل عن الحقوق والدعاوى وقبول الاحكام القابلة للطعن او التنازل عن هذه الطعون بعد رفعها .

ز ـ ايجار اموال القاصر لنفسه او لزوجته او لاحد من اقاربهما الى الدرجة الرابعة او لاى شخص يكون الوصى نائبا عنه .

مادة ٩٦
حفظ نقود القاصر

على الوصى ان يودع باسم القاصر فى احدى خزائن المحكمة او احد المصارف حسبما تشير اليه المحكمة جميع ما يحصله للقاصر من نقود بعد استبعاد النفقة المقررة والمبلغ الذى تقدره المحكمة لحساب مصروفات الادارة وذلك فى خلال خمسة عشر يوما من تاريخ تسلمه لهذه النقود، ولا يجوز للوصى ان يسحب شيئا من المبالغ المودعة الا باذن المحكمة .

مادة ٩٧
حساب الادارة

على الوصى ان يقدم للمحكمة المختصة حسابا مؤيدا بالمستندات عن ادارته فى ميعاد غايته ٣١ ديسمبر من كل عام .

مادة ٩٨
اجر الوصى

تكون الوصاية بغير اجر ، ولكن يجوز للمحكمة بناء على طلب الوصى ان تعين له اجرا وتمنحه مكافأة عن عمل معين .

مادة ٩٩
انتهاء الوصاية

تنتهى مهمة الوصى : ـ

أ ـ ببلوغ القاصر سن الرشد الا اذا تقرر استمرار الوصاية عليه.

ب ـ بعزله او قبول استقالته .

جـ ـ بفقد أهليته او ثبوت غيبته او موته .

د ـ بموت القاصر .

د ـ من كان بينه أو بين احد اصوله او فروعه او زوجته وبين القاصر نزاع قضائى ، او من كان بينه وبين القاصر او عائلته عداوة اذا كان يخشى من ذلك كله على مصلحة القاصر .

مادة ٩١

تعيين الوصى

يجوز للاب ثم للام ثم للجد ان يختار وصيا للقاصر ، ويجوز لكل منهما فى اى وقت ان يعدل عن اختياره . وتعرض الوصاية على المحكمة لتثبيتها .

مادة ٩٢

تعيين الوصى بواسطة المحكمة

اذا لم يكن للقاصر وصىّ مختار تعين المحكمة له وصيا.

مادة ٩٣

تعيين اكثر من وصى واحد

١ ـ يجوز عند الضرورة تعيين أكثر من وصى واحد ، وفى هذه الحالة لا يجوز لاحدهم ان يعمل منفردا .

٢ ـ فى حالة الاختلاف بين الاوصياء يرفع الامر للمحكمة لتأمر بما يتبع .

مادة ٩٤

واجبات الوصى

يتسلم الوصى اموال القاصر ليقوم بادارتها ورعايتها ، وعليه ان يبذل فى ذلك من العناية ما يطلب من الوكيل المأجور .

مادة ٩٥

حدود تصرفات الوصى

لا يجوز للوصى مباشرة التصرفات الاتية الا باذن من المحكمة :

أ ـ التصرف فى عقارات القاصر او رهنها.

ب ـ التصرف فى المنقولات او الاوراق النقدية فيما عدا ما يدخل فى أعمال الادارة .

جـ ـ اقتراض مال القاصر او اقراضه.

مـــادة ٨٦
اقراض مـــال القاصر

لا يجوز للولى اقتراض أو اقراض مال القاصر الا باذن من المحكمة.

مـــادة ٨٧
انتهـــاء الولايـــة

تنتهى الولاية ببلوغ القاصر سن الرشد ما لم تحكم المحكمة باستمرارها.

مـــادة ٨٨
سحب الولاية او الحد منها

اذا اصبحت اموال القاصر فى خطر بسبب سوء تصرف الولى او لاى سبب آخر ، فللمحكمة ان تسحب الولاية او ان تحد منها .

مـــادة ٨٩
رد امـــوال القاصـــر

يلتزم الولى او ورثته برد اموال القاصر اليه عند بلوغ الاخير سن الرشد ، وهم مسئولون عما تصرفوا فيه باعتبار القيمة وقت التصرف.

القســم الثانـــى
الوصـــاية والوكالـــة

البـــاب الاول
الوصاية علـــى القاصر

مـــادة ٩٠
الوصـــى

يشترط فى الوصى ان يكون عدلا كفاء ذا اهلية كاملة ، ولا يجـــوز بوجه خاص ان يعين وصيا .

أ ـــ المحكوم عليه فى جريمة من الجرائم الخطـرة .
ب ـــ من اشتهر بسوء سلوكه او من لم يكن له وسيلة مشروعـــة للتعيشـــس .

جـ ـــ من سبق ان سحبت ولايته على القاصر او عزل من الوصاية على قاصـــر آخـــر .

مـــادة ٨٠
بدايـــة النفقـــة وانقضـــاءهـــا

تبدا النفقة من تاريخ استحقاقها ، وتعتبر دينا لا ينقضى الا بـــالاداء او الابـــراء .

مـــادة ٨١
المقاصـــة

لا تجوز المقاصة بين نفقة الولد المستحقة على ابيه ودين الاب علـــى الام الحاضنـــة .

الكتاب الثالـــث
الولاية والوصاية والوكالـــة

القســـم الاول
الولايـــة

مـــادة ٨٢
الولايـــة

الولاية على القاصر وماله تكون للاب وللام ، ثم للجد ثم لوصى كـــل منهمـــا .

مـــادة ٨٣
واجبات الولـــى

يقوم الولى برعاية أموال القاصر وادارتها وولاية التصرف فيهـــا مع مراعاة الاحكام المنصوص عليها فى هذا القانون .

مـــادة ٨٤
حظـــر التبـــرع بامـــوال القاصر

لا يصح التبرع بمال القاصر او بمنافعه ، واذا تبرع احد بشـــىء من ذلك كان تبرعه باطلا وموجبا لضمانه ومسئوليته .

مـــادة ٨٥
التصـــرف فى امـــوال القاصـــر

لا يجوز للولى ان يتصرف فى أموال القاصر لنفسه او لزوجتـــه او لاقاربهما الا باذن من المحكمة .

كما لا يجوز له ان يرهن عقار القاصر لدين على نفسه.

مـــادة ٧٦

حق الوالديـــن فـــى النفقـــة

١ ــ تجب على الولد الموسر ، ذكرا كان او انثى ، نفقة والديـــه اذا كانا غير قادرين على الكسب .

٢ ــ اذا تعدد الاولاد اشتركوا فى نفقة والديهم بنسبة دخولهم .

مـــادة ٧٧

حقـــوق وواجبـــات الفقـــراء

١ ــ الفقير الذى لا تجب عليه النفقة هو الذى ليس له مال تزيد قيمته عن المقدار الضرورى عرفا لحاجته الحالية المشروعة وحاجة عيالـــه وقضاء ديونه الحالية او القريبة الاداء ، ولا مورد له من حرفة او مـــن غيرها يكفى ما ذكـــر .

٢ ــ والفقير الذى تجب له النفقة على غيره هو الذى لا يجـــد ما ينفقه على متطلبات معيشته او يجد ما لا يكفيه .

مـــادة ٧٨

حقـــوق وواجبات الموســـر

١ ــ الموسر الذى تجب عليه النفقة هو الشخص الذى له مال تزيد قيمته عن المقدار الذى تتطلبه عرفا حاجته المشروعة وحاجة عياله وقضاء ديونه الحالية او قريبة الحلول ، او له مورد من حرفة او غيرها ، يزيـــد عن وفاء الحاجات المذكورة .

٢ ــ ولا يعتبر مالا زائدا عن الحاجات سالفة الذكر العقار او راس المال الذى يتوقف عليه كسب الكفاية او البيت الذى لا تزيد قيمتـــه او مساحته عن حاجة سكنى صاحبه وسكنى عياله .

مـــادة ٧٩

اولويـــة استحقـــاق النفقـــة

١ ــ اذا تعدد المستحقون للنفقة وكان المكلف بها غير قادر علـــى نفقتهم جميعا ، تقدم زوجته على غيرها ثم نفقة اولاده ووالديه.

٢ ــ اذا تعـــدد من تجب عليهم النفقة وكانـــوا جميعا قادرين على النفقة يدفع كل منهم حصته فيها لكل واحد من المستحقين .

٣ ــ وان لم يكونوا قادرين على النفقة جميعا يطبق عليهم الفقـــرة الاولى من هذه المادة .

بموافقة الولى .
٢ ــ وفى حالة وجود خلاف بين الحاضن وولى الولد يكون الحكم للقاضى .

مادة ٧٢
حق رؤية المحضون

اذا كان المحضون عند احد الابوين ، لايجوز له أن يمنع الاخر من رؤيته او البقاء معه لمدة وجيزة . ولايكون حق الرؤية الا للوالدين ، وللقاضى ان يحسم اى خلاف ينشأ فى هذا الشأن .

مادة ٧٣
وقف حق الحضانة

لاينفذ حق الرؤية جبرا ولكن اذا امتنع من بيده الولد من الابوين عن تنفيذ حق الرؤية يجوز للقاضى أن يوقف حقه فى الحضانة لمدة لاتزيد عن شهر واحد .

القسم الثانى
النفقة

مادة ٧٤
نفقة الاقارب

لانفقة للاقارب فيما عدا الاصول والفروع .

مادة ٧٥
نفقة الاولاد

١ ــ اذا لم يكن للولد الصغير مال فنفقته على الموسر من والديه .
٢ ــ وتستمر نفقة الاولاد على والديهم .
أ ــ للبنت الى ان تتزوج أو تحصل على عمل يمكنها من الاعتماد على نفسها عند بلوغها سن الرشد .
ب ــ للذكر الى أن يبلغ الثامنة عشر من عمره .
٣ ــ اذا بلغ الذكر الثامنة عشر من عمره عاجزا عن الكسب لآفة بدنية او عقلية او بسبب استمرار تعليمه ، استمرت نفقته على والديه .
٤ ــ يخضع الاولاد لسلطة الوالدين اثناء فترة النفقة .
٥ ــ فى حالة انقضاء عقد الزواج ، لاى سبب كان ، تتم نفقة الاولاد وفقا للمادتين ٣١ و٣٢ من هذا القانون .

مـــادة ٦٦

اختيـــار الحاضن الاصلح

اذا تعدد اصحاب الحق فى الحضانة من الاقارب المتساوين فى الدرجة، اختار القاضى من بينهم الاصلح للولد ، وعند التساوى يقدم المتبرع .

مـــادة ٦٧

زواج الحاضـــن

اذا تزوجت الحاضنة برجل غير قريب من المحضون سقط حقهـــا فى الحضانـــة .

لا يطبق هذا الحكم على الام الارملة الحاضنة .

مـــادة ٦٨

سقـــوط حـــق الحضـــانة

لا يسقط حق الحضانة ، ولكنه يتوقف بانتهاء المدة المقررة لها .

مـــادة ٦٩

انتهـــاء مـــدة الحضانـــة

١ ــ ينتهى الحق فى الحضانة متى اتم الصغير عشر سنوات والصغيرة خمســـة عشر سنـــة .

٢ ــ للقاضى ان يأذن باستمرار حضانة الصغير او الصغيرة بعـــد السن المتقدمة ، اذا تبين له انهما لا يستطيعان الاستقلال بأمورهما.

٣ ــ تنتهى الحضانة ببلوغ المحضون الثامنة عشر من عمره .

مـــادة ٧٠

امتـــداد فترة الحضانة

من جاوز الحضانة مريضا أو معتوها او مجنونا ، ذكرا كان انثـــى ، كانت امه اولى برعايته وامساكه ولو جاوز حد البلوغ ، واذا لم توجد الام يجوز للقاضى أن يعهد برعايته الى من يراه اصلح لذلك واقدر عليه .

مـــادة ٧١

السفر للخارج

١ ــ لايجوز للحاضن أن تسافر بالمحضون خارج الجمهوريـــة الا

مـــادة ٦١

قبـــول الاقـــرار

يثبت النسب باقرار الابوة او الامومة بشرط رضاء من كان الاقـرار لمصلحته وان يسمح بذلك فارق العمر بينهما .

الباب الرابع

حضـــانة القاصـــر

مـــادة ٦٢

وجـوب الرضاعـــة

يجب على الام ارضاع ولدها اذا تعذرت تغذيته بطريقة أخرى لاى سبـب كـان .

مـــادة ٦٣

الحضانـــة

يقصد بحضانة الولد تربيته تربية حسنة وتعليمه والعناية بنشأتـه الخلقية بمالا يتعارض مع الحوق الخاصة بوليه .

مـــادة ٦٤

صلاحيـــة الحاضـــن

١ ــ حضانة الذكور حتى بلوغهم عشر سنوات والاناث حتى خمسة عشر سنة واجبة على الام . فى حالة زواج الام من رجل آخر ، ويجوز لها ان تستمر فى حضانة الاولاد بشرط موافقة الاب على ذلك .

٢ ــ تنتقل الحضانة الى الاب او الى احد الاقارب ، فى حالـــة وجود مانع شرعى او وفاة الام .

٣ ــ فى حالة عدم وجود الاشخاص السابق ذكرهم ، او فى حالـة عدم صلاحيتهم ، يجوز للقاضى ان يعهد بحضانة الولد الى شخص آخـر مع مراعـاة مصلحة الولـد .

٤ ــ يجوز للقاضى ان يعهد بحضانة الولد ثانية الى امه او اى شخص من اقاربها اذا ثبت لديه زوال سبب عدم الصلاحية .

مـــادة ٦٥

الشـــروط الواجب توافرها فى الحاضـــن

يشترط فى الحاضن ان يكون بالغا حريصا على مصلحة الولد .

مـــادة ٥٦

النسب الـــى الاب عقب طلاق بائن أو وفاة الزوج

يثبت نسب الولد اذا تمت ولادته اثناء فترة العدة عقب طـــلاق بائن او وفاة الزوج بشرط حدوث الولادة خلال اثنى عشر شهرا من تاريخ الطلاق البائن أو وفاة الزوج .

مـــادة ٥٧

النسب الى الاب فى الزواج الفاسد

يثبت نسب الولد فى الزواج الفاسد من الرجل اذا جاءت به المـراة قبل المتاركة او التفريق بعد ستة شهور وخلال اثنى عشر شهرا مـــن الدخـــول الحقيقى .

مـــادة ٥٨

عـــدم ثبـــوت النسب

لا يثبت النسب ، اذا ثبت بطريق قطعى ان الرجل عنين او غـــير قادر على الانجاب لمانع خلقى أو مرض ، واذا حدث نزاع فى ذلك استعانت المحكمـــة باهل الخبـــرة .

البـــاب الثانـــى

النسب الـــى الام

مـــادة ٥٩

ثبوت النســـب الـــى الام

يثبت نسب كل مولود الى أمه بمجرد ولادته دون قيد أو شـــرط ، ويترتب على هذا النسب جميع نتائجه المالية والمعنوية .

الباب الثالـــث

الاقـــرار بالابـــوة

مـــادة ٦٠

الاقـــرار بالابـــوة

يثبت النسب باقرار الرجل بالابوة لمصلحـــة مجهول النسب حتى ولو تم الاقرار عند الوفاة ، شريطة ان يسمح بذلك فارق العمر بينهما .

الكتـــاب الثانـــى
الخلـــف والنفقـــة
القســـم الاول
القرابـــة

البـــــاب الاول
النســـب الـــى الاب

مـــــادة ٥٣
مـــدة الحمـــل

اقل مدة للحمل مائة وثمانين يوما ، واقصاه سنة شمسية واحدة .

مـــــادة ٥٤
النســـب الـــى الاب وثبوتـــه

١ ـــ يثبت نسب المولود فى الزواج الصحيح من الزوج بالشرطـــين التاليين :

أ ـــ انقضاء اقل فترة للحمل من تاريخ عقد الزواج .
ب ـــ عدم ثبوت استحالة تلاقى الزوجين لمانع موجود استمر مـــن وقت العقد الى وقت الولادة ، او حدث بعده واستمر اثنى عشر شهـــرا متتالية ، وفى حالة زوال المانع تحتسب مدة الحمل من تاريخ الزوال .

٢ ـــ فى حالة عدم توفر الشروط السابقة ، لا يثبت نسب المولـــود ما لم يعترف به الـــزوج .

مـــــادة ٥٥
النسب الـــى الاب اثناء العـــدة وبعدهـــا

١ ـــ اذا ولدت المعتدة من طلاق رجعى اثناء عدتها ، ثبـــت نسب ولدها لمطلقها .

٢ ـــ فاذا ولدت بعد اعتبار عدتها منقضية بمضى المدة او باقـــرار منها بالانقضـــاء ، لا يثبت النســـب الا اذا جـــاءت بالولد خـــلال مائـــة وثمانين يوما من تاريخ اعتبار العدة منقضية ، وفى هذه الحالة تعتبـــر الولادة دليل الرجعة واستمرار العدة ما لم يثبت الزوج خلاف ذلك .

أ ــ فسخ الزواج بعد تمام الدخول،

ب ــ الطلاق الرجعى او البائن بعد تمام الدخول،

جـ ــ وفاة الزوج او حكم او قرار اعتباره ميتا ولو قبل الدخول.

مـــادة ٤٩

عدم وجوب العدة

لا تجب العدة بالفرقة قبل الدخول ، باستثناء الحالة المنصوص عليها فى الفقرة «جـ» من المادة ٤٨ .

مـــادة ٥٠

فتـرات العـدة

١ ــ تنقضى عدة غير الحامل بمضى تسعين يوما .

٢ ــ تنقضى عدة الحامل بوضع الحمل او سقوطه.

٣ ــ تنقضى عدة المتوفى عنها زوجها بمضى أربعة اشهر وعشرة ايام.

٤ ــ تبدأ العدة من تاريخ الطلاق او وفاة الزوج او الفسخ.

مـــادة ٥١

عـــدة الطلاق او الوفـــاة

١ ــ المطلقة رجعيا اذا توفى عنها مطلقها اثناء العدة تنتقل الى عدة الوفاة ولا تحتسب المدة السابقة .

٢ ــ المبانة اذا توفى عنها مطلقها اثناء عدتها فانها تكمل عدة الطلاق ولا تنتقل الى عدة الوفاة.

مـــادة ٥٢

النفقـــة اثنـــاء العـــدة

يستمر الزوج فى اعطاء النفقة لزوجته اثناء العدة اذا سبق الزامـــه بهـــا .

٢ ـ يجوز للزوجة ان تطلب فسخ الزواج اذا اذن للزوج فى ان يتزوج بأخرى الا اذا كان هناك اولاد .

مـــادة ٤٤

النفقـــة

اذا وقع الطلاق او الفسخ بخطأ من الزوج ، حكم القاضى عليـــه بالانفاق على زوجته السابقة لمدة لا تقل عن ثلاثة اشهر ولا تزيد عن سنة. اما اذا وقع بخطأ الزوجة ، حكم عليها لصالح الزوج بمبلغ لا يزيد عـــن المهـــر.

الباب الثالـــث

افتراض المـــوت

مـــادة ٤٥

قـــرار افتراضـــى الموت

يحكم القاضى بوفاة المفقود بعدمضى اربع سنوات من تاريخ فقده،وبالنسبة لمن يفقد من أفراد القوات المسلحة اثناء العمليات الحربية يصدر وزيـــر الدفاع قرار باعتباره ميتا بعد مضى اربع سنوات من فقده .

مـــادة ٤٦

العـــدة بعد قـــرار افتراضـــى الموت

بعد الحكم بوفاة المفقود او صدور قرار وزير الدفاع باعتباره ميتـــا، تعتد زوجته عدة الوفاة من وقت صدور الحكم او القرار .

مـــادة ٤٧

ابطال واعادة رابطة الزوجيـــة

١ ـ الحكم او القرار المنصوص عليه فى المواد السابقة يبطل الزواج.
٢ ـ اذا عاد المفقود او تبين انه حى عادت له زوجته تلقائيا ما لـــم تنته العـــدة .
٣ ـ اذا انتهت عدة الزوجة يصبح قرار الفسخ نهائيا.

الباب الرابـــع

العـــــدة

مـــادة ٤٨

وجـــوب العـــدة

تجب العدة على المرأة فى الحالات التالية : ـ

مـــادة ٤١

شروط صحة الطلاق

يشترط لوقوع الطلاق من الزوج أن يكون بالغا عاقلا ، فلا يقـع طلاق المجنون والقاصر والمكره بغير حق .

الباب الثانـى

فسخ الـزواج

مـــادة ٤٢

الفســـخ

١ ــ الفسخ هو ابطال عقد الزوج بحكم من القاضى .
٢ ــ يكون للفسخ نفس آثار الطلاق الرجعى .
٣ ــ يترتب على دعوى الفسخ فقدان الزوج لحق التطليق.

مـــادة ٤٣

حـــالات الفســـخ

١ ــ لكل من الزوجين الحق فى طلب الفسخ فى الحالات التالية : ــ

أ ــ وجود مرض بالآخر لا يمكن البرء منه وتستحيل بوجـــوده المعاشرة الزوجية اولا يمكن البقاء معه رغم امكان المعاشرة الزوجيـة الا بضرر ، على ان يدعم الطالب ذلك بشهادة طبية واثبات عدم علمه بهـذا المرض قبل الزواج.

ب ــ اذا تغيب احد الزوجين لمدة تزيد على اربعة سنوات متتالية ، اما اذا عاد الشخص الغائب قبل الحكم بالفسخ يبطل طلب الفسخ .

جـ ــ اذا كان احدهما قادرا على الانفاق على الآخر المعسر ، واعتاد الامتناع عن الانفاق عليه.

د ــ اذا أعسر الزوجان واصبح كلاهما غير قادر على القيـــام بالتزامه بالانفاق وفى هذه الحالة يصدر القاضى حكمه بعد مضى ستة اشهر من تاريخ طلب الفســخ.

هـ ــ اذا احتدم الخلاف بين الزوجين لدرجة أصبحت معها الحيـاة الزوجية مستحيلة . وفى هذه الحالة على المحكمة ان تتخذ الاجـــراءات المشار اليها فى المادة ٣٧.

و ــ دوام عنة او عقم احد الزوجين.

ز ــ فى حالة صدور حكم بالسجن لمدة تزيد عن اربع سنوات علـــى ان يقدم طلب الفسخ بعد قضاء المحكوم عليه أربع سنوات من العقوبة.

٤ ــ كل طلاق يقع رجعيا الا الطلاق الذى يقع قبل الدخـــول والطلاق المكمل للثلاث.

مـــادة ٣٦
ايقـاع الطلاق

١ ــ يقع الطلاق من جانب الزوج بموجب اذن يصدر بذلك مـــن المحكمة المختصـــة.

٢ ــ يجوز للمحكمة اصدار مثل هذا الاذن فقط بعد احالة الدعوى على لجنة المصالحة التى عينتها.

وبعد التأكد من فشل المساعى التى بذلت لتسوية الخلافات بـــين الزوج والزوجـــة .

٣ ــ فى حالة فشل محاولة تسوية الخلافات ، ترسل اللجنة محضرا مكتوبا بذلك الى المحكمة بعد ٦٠ يوما من تعيينها.

٤ ــ لا يجوز للمحكمة ان تسمح بأكثر من طلقة فى كل مرة.

مـــادة ٣٧
اعادة رابطة الزوجية

الطلاق الرجعى لا ينهى الزوجية حال وقوعه ، ويجوز ايضـــا اعادة رابطة الزوجية اثناء فترة العدة.

مـــادة ٣٨
البينونة الصغرى

بانقضاء العدة ، يصبح الطلاق الرجعى طلاقا بائنا بينونة صغرى، ولا يجوز للرجل ان يتزوج ثانية بمطلقته الا بعقد جديد .

مـــادة ٣٩
البينونة الكبرى

الطلاق بالبائن بينونة كبرى وهو المكمل للثلاث ينهى الزوجيـــة بمجرد وقوعه ، ولا يجوز للرجل أن يتزوج مطلقة مرة اخرى الا اذا توافرت الشروط المبينة بالمادة ١٥.

مـــادة ٤٠
طلاق العاجـز عن الكـلام

يقع الطلاق من العاجز عن الكلام بالكتابة ، او بالاشارة المفهومة.

لاسباب غير العوز ، يحدد القاضى هذه النفقة لتكون دينا فى ذمة من لم يوف بها، ويخول للآخر الحق فى الاستدانة بما لا يزيد عن المبلغ المحدد.

٥ — يحق للدائن المطالبة باسترداد هذا الدين مباشرة من الطرف الذى يلزمه القاضى بذلك .

مادة ٣٢

النفقة المؤقتة

١ — فى حالة التسليم بسبب استحقاق النفقة وشروط ه، يجوز للقاضى أن يفرض للطالب نفقة مؤقتة الى أن يحكم بالنفقة نهائيا.

٢ — ويكون هذا الفرض واجب النفاذ فورا .

الباب الحادى عشر

وجوب المعاشرة الزوجية

مادة ٣٣

١ — يلتزم الزوجان بمعاشرة بعضهما ، الا فى حالات الضرورة او الاتفاق فيما بينهما.

٢ — يجب على الزوجة ان تتبع زوجها ما لم يكن هناك مانع قانونى لذلك.

القسم الثانى

انقضاء واعادة الرابطة الزوجية

مادة ٣٤

طرق الانقضاء

ينتهى عقد الزواج بالطلاق او الفسخ او وفاة أحد الطرفين.

الباب الاول

الطلاق

مادة ٣٥

الطلاق الرجعى والطلاق البائن

١ — الطلاق نوعان: رجعى او بائن .

٢ — الطلاق الرجعى لا ينهى رابطة الزوجية الا بانقضاء العدة.

٣ — الطلاق البائن ينهى الزوجية حين وقوعه .

الباب التاسع
نفقات الزواج

مادة ٢٨
المساهمة فى نفقات الزواج

يساهم كل من الزوج والزوجة فى نفقات الزواج ومتطلبات الزوجية حسب الامكانيات المالية لكل منهما .

مادة ٢٩
الملكية المشتركة فى الجهاز والامتعة الشخصية

١ ــ اثاث المنزل ملك مشترك للزوج والزوجة .
٢ ــ وفى حالة ابطال العقد ، تقسم هذه الملكية بالتساوى بين الزوجين .
٣ ــ ومع ذلك فلكل من الزوج والزوجة الحق المطلق فى الامتعة الشخصية ، والمعدات المهنية كل فيما يخصه.

الباب العاشر
النفقة

مادة ٣٠
تعريف النفقة

النفقة هى الغذاء والكسوة والمسكن والخدمة وتربية الاطفال ومصاريف العلاج وغير ذلك مما يلزم لرعاية الاسرة.

مادة ٣١
الالتزام بالنفقة وكيفية ادائها

١ ــ يساهم كل من الزوج والزوجة فى تكاليف الحياة الزوجية بالنسبة لدخل كل منهما ، وفى حالة عدم قدرة أحدهما على المساهمة، يلتزم الاخر بتحمل أعباء وتكاليف الحياة الزوجية .
٢ ــ اذا نشأ خلاف بين الزوجين ، يستعين القاضى بأهل الخبرة ويحسم الخلاف بالطريقة التى يراها.
٣ ــ اذا قصر اى من الزوج او الزوجة فى التزامه بالنفقة الواجبة، يجب عليه (او عليها) دفع حصته منها ما لم يكن عاجزا تماما عن ذلك.
٤ ــ اذا استحال على احد الزوجين الحصول على النفقة من الاخر

د ــ اذا كانت المرأة متزوجة بآخر او معتدة .

٤ ــ يعتبر الزواج فاسدا ما لم يتوافر فيه اى شرط من الشروط المنصوص عليها فى هذا القانون علاوة على الشروط المذكورة فى الفقرة السابقة.

مادة ٢٣

الاثار المترتبة على الزواج الباطل او الفاسد

١ ــ الزواج الباطل لا يترتب عليه شيء من آثار الزواج اصلا.

٢ ــ لا يترتب على الزواج الفاسد سوى الاثار التالية :ــ

أ ــ ثبوت نسب الاولاد من هذا الزواج،

ب ــ حرمة المصاهرة،

جـ ــ وجوب العدة عقب المفارقة او الموت.

الباب الثامن

المهر

مادة ٢٤

حتمية المهر ــ تسميته ــ حده الاقصى

١ ــ تستحق العروس المهر بمقتضى القانون.

٢ ــ يجب تسمية المهر وقت العقد.

٣ ــ الحد الاقصى للمهر الف شلن صومالى او ما يعادله من اموال.

مادة ٢٥

تعجيل المهر وتاجيله

يجوز تعجيل المهر أو تاجيله ، كله او بعضه الى اجل معلوم.

مادة ٢٦

التنازل عن المهر

يجوز للزوجة البالغة العاقلة ان تتنازل لزوجها عن كل المهر او بعضه.

مادة ٢٧

المهر والطلاق

اذا وقع الطلاق قبل الدخول ، تستحق الزوجة نصف المهر المسمى فى العقد.

٢ — يشترط فى الولى ان يكون بالغا عاقلا ونزيها.
٣ — فى حالة عدم وجود الاشخاص السابق ذكرهم ، او فى حالة عدم رضاء اى منهم بتولى زواج المراة ، او وجودهم بمسافة تبعد مائة كيلومتر ، يتولى زواجها القاضى او من توفضه الوزارة لذلك.

مادة ٢٠
اختيار او تعيين الولى

١ — فى حالة تعدد الاولياء فى الدرجة ، يتولى عقد الزواج من تختاره المراة .

٢ — اذا لم تختار المراة وليها ، يعين القاضى هذا الولى .

مادة ٢١
الهروب من سلطة الولى

ما لم يشكل الفعل جرما اكبر وفقا للقانون الجنائى ، يعاقب بغرامة تتراوح من ٢٠٠ الى ١٠٠٠ شلن صومالى او بالسجن لمدة اقصاها ٣ اشهر ، كل من يعقد على امراة قاصرة بعد الفرار بها الى مسافة تزيد عن مائة كيلومتر من محل اقامة وليها ، وذلك بغرض الهرب من سلطة الولى .

الباب السابع

الزواج الصحيح او الباطل او الفاسد ، وما يترتب عليه من آثار

مادة ٢٢
الزواج الصحيح او الباطل او الفاسد

١ — الزواج صحيح او فاسد .
٢ — الزواج الصحيح هو ما توافرت اركانه وشرائطه طبقا لاحكام هذا القانون .

٣ — يعتبر الزواج باطلا ، باستثناء ما نصت عليه المادة ٧ ، فى الحالات التالية : —
أ — وجود عيب فى اهليه المتعاقدين .
ب — اذا تم بدون شهود.
جـ — اذا كانت الزوجة من المحارم الوارد ذكرها فى المواد ٩، ١٠، ١١، ١٣ من هذا القانون.

الباب الخامس

المحل ــ شرط السن ــ حالات بطلان الزواج

مادة ١٥

شرط زواج الرجل بمطلقته ثلاثا

١ ــ لا يصح ان يتزوج الرجل مطلقته ثلاثا الا بعد انقضاء عدتها من زواج آخر دخل بها فعلا فى زواج صحيح وتلقائى.

٢ ــ تعتبر جريمة اية مخالفة لمضمون النص الوارد ذكره فى الفقرة السابقة ، يعاقب عليها بالسجن لمدة تصل الى ستة شهور ، وغرامة تصل الى الف شلن صومالى.

مادة ١٦

شرط السن

يجوز لكل شخص ان يتزوج مختارا عند بلوغه الثامنة عشر من عمره.

يجوز للمراة ــ اذا كملت ١٦ سنة ولم تبلغ ١٨ سنة ان تتزوج برضاء والدها ، ومع ذلك يجوز للقاضى عند الضرورة القصوى اعفاء طرفى التعاقد من شرط السن سابق الذكر .

مادة ١٧

موافقة الولى

اذا رفض الولى ان يتولى زواج موليته البالغة من العمر ست عشرة سنة ودون الثامنة عشر سنة.

للقاضى او من تفوضه وزارة العدل والشئون الدينية ان يأخذ الولاية على عاتقه ويزوجها حسب ارادتها.

مادة ١٨

الوكالة

فى عقد الزواج يجوز ان ينوب عن العريس اى شخص آخر .

الباب السادس

ولى الزواج

مادة ١٩

الولاية

١ ــ ولى المراة القاصرة فى الزواج ابوها ثم امها ، ثم جدها ، ثم اخوها الاكبر ثم عمها.

مـــادة ١٢
التحريـم بسبـب الرضـاع

١ ــ يحرم من الرضاع ما يحرم من النسب.

٢ ــ لا يثبت التحريم بالرضاع الا اذا تم ارضاع الطفل باللبن فى السنتين الأولتين من حياته خمس رضعات مشبعات متفرقات.

الباب الرابـــع
الزواج بامراة ثانيـــة

مـــادة ١٣
شـروطه:

لا يجوز للرجل الزواج بامراة ثانية دون تصريح كتابى بذلك مـــن محكمة الناحية المختصة ، ولا تصدر المحكمة مثل هذا التصريح ما لـــم تتحق من توفر أحد الشروط التالية :

١ ــ ثبوت عقم الزوجة باقرار لجنة الاطباء المتخصصين ، بشرطة عدم علم الزوج بهذا العقم قبل الزواج.

٢ ــ وجود شهادة طبية بأن الزوجة مريضة بمرض مزمن او معد لا يمكن البرء منـــه .

٣ ــ صدور الحكم بالسجن على الزوجة لمدة تزيد على سنتين.

٤ ــ تغيب الزوجة بلا سببه مقبول عن بيت الزوجية لمدة تزيـــد على ستـــة.

٥ ــ ما تمليه ظروف البيئة.

وفى هذه الحالة ، يجوز منح التصريح أيضا بواسطة الشخص الذى فوضته وزارة العدل والشئون الدينية لهذا الغرض.

مـــادة ١٤
المحرمـــات

لا يجوز الجمع بين امراتين ــ بينهما قرابة ــ لو فرضت احدهما ذكرا لحرمت عليه الاخرى.

مـــادة ٨
الصيـــغة

١ ــ ينعقد الزواج بايجاب وقبول من أهلهما .
٢ ــ يكون الايجاب والقبول فى الزواج مشافهة بصريح اللفـــظ ووضوحه ، كما يجب الا يكونا مشروطين او داليين على التوقيت.
٣ ــ يتم الايجاب والقبول فى اتحاد مجلس العقد بين الحاضـرين مشافهة وبمجرد النطق بالايجاب.
٤ ــ يجوز أن يتم الايجاب بالنسبة للشخص الغائب كتابة او بتوكيل منه للزواج.
٥ ــ فى حالة العجز عن النطق ، تقوم مقامه الكتابة ، فـــان تعذرت فالاشارة المفهومة.
٦ ــ يعتبر الايجاب صحيحا الى حين صدور القبول.

مـــادة ٩
الشاهـــدان

يشترط فى الشاهدين ان يكونا بالغين عاقلين ان المقصود بموضوع العقـد هو الـزواج.

الباب الثالـــث
المحرمـــات
مـــادة ١٠
التحريم بسبب القرابـــة (النسب)

يحرم على الشخص الزواج بأصوله وفروعه وفروع والديه وفروع أجداده وفروع جداته من الدرجة الاولى .

مـــادة ١١
التحريم بسبـــب المصاهـــرة

يحرم على الرجل بسبب المصاهرة الزواج :
أ ــ زوجة أحد اصوله .
ب ــ زوجـــة أحد فروعـــه .
جـ ــ أصول زوجتـــه .
د ــ فروع زوجته اذا كان قد دخل بها دخولا حقيقيا.
هـ ــ فروع من دخل بها دخولا حقيقيا بعقد فاسد .