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BAHRAIN

Overview

The majority of the citizens of Bahrain are of Arab descent and follow the Islamic religion. The Shia Jafari School of Islamic law has the most influence, although the Maliki and Shafi schools can be applied as well. There is a significant expatriate community in Bahrain. British common law has had some impact on the legal system of Bahrain but the major influence is Islamic law. Article 2 of the 1973 Constitution reads that the Sharia is a principle source of legislation and Islam is the official religion of the State. Also recognised as subsidiary sources of law are custom and natural law. Personal status law remains uncodified and therefore based on classical Sharia.

Foreign Orders

Article 252 of the Civil and Commercial Procedures Act 1971 reads that judgements passed in any foreign country may be ordered to be enforced on the same conditions. An application for the issue of an enforcement order should be made to the High Court. An enforcement order will not be issued unless the Bahrain law courts are not competent to hear the case, the foreign court is competent to hear the case, all parties to the case were duly summoned and represented, the judgement is final, and the judgement is not inconsistent with any judgement passed by the Bahrain courts nor with Bahraini public order or ethics.

Court Structure

Bahrain has a dual court system consisting of Sharia Courts and Civil Courts and the judicial authority is governed by The Judicial Authority Law No.42 of 2002. The Civil Courts have jurisdiction over commercial, civil and

criminal cases and the personal status of non-Muslims. Within the civil court structure there is the Lower Court, the High Civil Court, the High Court of Appeal and the Court of Cassation. A Supreme Judicial Council oversees the court system. Article 21 of the Civil and Procedures Act 1971 reads that the High Court is competent to hear in the first instance cases relating to the personal status of non-Muslims. The personal status of non-Muslims is governed by the law of the state to which they belong by nationality. If a case involves the protection of a minor child the law of the state of the person to be protected shall be applied.

The Sharia Courts have jurisdiction over matters related to the personal status of Muslims of any nationality. The Sharia Courts are divided into Lower Sharia Courts, Higher Sharia Courts and High Sharia Courts of Appeal. Each level is further divided in courts for Sunni Muslims and courts for Shia Muslims. The Lower Sharia Court consists of a single judge and has jurisdiction in matters of alimony, custody and inheritance. The High Sharia Court has first instance jurisdiction over personal status issues not subject to the jurisdiction of the Lower Sharia Court also over appeals against judgements of the Lower court. The High Sharia Court of Appeal hears appeals from the High Sharia Court

Filiation

In Malaki and Shafi jurisprudence a child is legitimate if born within a valid or irregular marriage if the child is born at least six months after the marriage was contracted up to four years after the separation of the husband and wife. In Jaafari law a child is legitimate if born at least six months after the conclusion of a marriage and no more than ten months after the separation of husband and wife.

Custody

In classical Jaafari law the mother has the most right to the physical care of her children if she is Muslim and if her female children are under the age of seven and her male children are under the age of two. According to Malaki principles the mother has custody of female children until they marry and male children until they reach puberty, the maximum age for puberty in males being set at fifteen. If Shaafi principles are applied the mother would have custody until her children reach the age of discretion, the minimum age

for this normally being set at seven. The children then have to choose to remain with the mother or to go to live with the father.

A non-Muslim mother may be denied her right to the custody of her Muslim children as she may be deemed unfit to raise her children in accordance with Islam.

Guardianship

In all cases the father is the automatic guardian of the person and property of his children, therefore he retains the ultimate authority over the upbringing of the children. Article 14 of the Law on Trusteeship of Minors' Funds 1986 reads that the father has the most right to trusteeship of a minor's funds, followed by paternal grandfather. The father may also nominate an elected guardian to look after his minor children. A nominee must be of the same religion as the child and cannot be nominated if he has been convicted of a crime affecting honour or integrity, of any bankruptcy offence, if he is reputed for his misconduct or if he has been previously deprived of guardianship of another minor.

Access

Access is a right of both parents as long as this access is not harmful to the child. If a mother attempts to remove a child away from the father and prevent access she will lose her custody rights.

Non-Muslim Family Law

The Civil Courts have jurisdiction over the personal status of non-Muslims.

Nationality

Legislative Decree No.12 of 1989 with respect to amending the Bahraini Citizenship Act 1963 reads in Article 4 that a person is considered to be Bahraini if the father is Bahraini or if he or she was born to a Bahraini mother and the father is unknown or the relationship between father and child has not been legally proved. This applies wherever the place of birth. A person born in Bahrain to unknown parents is considered to be Bahraini.

Leaving the Jurisdiction

According to Article 13 of the Passports Act No.11 of 1975 separate passports cannot be issued to those lacking legal capacity except with the written permission of the legal representatives of that person, nor can a passport be issued to wives without the written permission of her husband. Parents can petition the court to prohibit a child from obtaining a separate passport or from travelling alone without consent.

International Law

The UN Convention on the Rights of the Child came into force in Bahrain in 1992.

Child Abduction

Article 318 of the Penal Code reads that anyone ordered to hand a child to a legal custodian who does comply may be punished by a fine or detention.

Contacts

Ministry of Justice and Islamic Affairs
PO box 450
Bahrain
Tel:17531333, S.B-17522300
Fax: 17531284

Ministry of Foreign Affairs
PO Box 547
Bahrain
Tel:17227555/ S.B-17522300
Fax: 17531284

EI 14/4/05