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LEBANON

Overview

The Lebanese legal system has been influenced by a combination of Ottoman and Islamic principles, as well as civil law. The Sharia is not established as a source of law in the 1926 Constitution, nor is there a State religion. This is a result of the make-up of the population of Lebanon. There are communities of Sunni and Shia Muslims, as well as eighteen official Christian denominations and a significant Druze community. Personal status matters are governed by the religious authorities of each community. According to Article 242 of the 1962 Law on the Rights of the Family, the sources for the family law applied to Sunnis are Hanafi fiqh and the Ottoman Law of Family Rights (OLFR). Jaafari fiqh and the OLFR are applied to the Shia Muslims and the Druze have a separate code. The Christian denominations have their own codes, and due to the formerly significant Jewish population of Lebanon there is also a Jewish personal status code.

Foreign Orders

Foreign orders concerning the personal status of children do not require exequatur and can be enforced if they are not subject to litigation and provided that they will not violate public order.

Court Structure

The ordinary courts in Lebanon are subdivided into civil and criminal courts. These courts are then arranged in to a hierarchy of three levels. At the first level is the Court of First Instance. In these courts cases are generally presided over by three judges, although in minor matters only one judge will hear the case. Appeals from this court are heard by the Court of Appeal.

There are six of these courts, with one in each district of Lebanon. At the highest level is the Court of Cassation.

Religious Courts have jurisdiction over family matters. There are Sharia Courts for Sunni and Shia Muslims, as well as the Druze sect. There are Ecclesiastical Courts for the different Christian denominations and the Jewish community also has its own court. In divorce and custody cases involving spouses who have had a civil marriage the civil courts have jurisdiction, unless those involved submit to the jurisdiction of a religious authority.

In 1990 a Constitutional Court was established. There is also a Juvenile Court, a Labour Court and a Customs Committee.

Filiation

According to the law applied to Lebanese Sunnis filiation is established if a child is born within a marriage at least six months after contracting the marriage and up to two years after the dissolution of a marriage or the death or absence of the husband. If the child is born outside this period it must be acknowledged by the father in order to establish paternity. An illegitimate child does not inherit from the father as paternity is not established.

According to the Druze Family Law Code of 1948 a child is legitimate if born at least eighty days after the conclusion of a marriage and no more than three hundred days after separation of the spouses. If a child is born within a marriage but outside of this recognised period the father must make a declaration in order to establish paternity.

Custody

The period of custody for Sunni Muslims is guided by traditional Hanafi law and therefore lasts until a male child reaches the age of seven and a female child reaches the age of nine. This is also the period of custody established in the Druze code. Whereas in Shia Jaafari law the period of custody ends when a male child reaches the age of two and a female child reaches the age of seven.

For Sunnis and Druze the person with the most right to custody is the mother, however she, and any other custodian, must fulfil certain conditions. She must be an adult, of good character, have the ability to raise and care for the child, she must not be an apostate and must not remarry outside the prohibited degree of relationship to the child. If the mother cannot be the custodian the duty is passed down the maternal line to the maternal grandmother, paternal grandmother, full sisters, uterine sisters, consanguine sisters, nieces in the same order of priority as sisters and aunts again in the same order. According to the code applied to Sunnis if the mother is Christian or Jewish then the period of custody ends when the child reaches an age at which he or she can discern in matters of religion. In Jaafari jurisprudence a non-Muslim mother may not have custody of her Muslim children.

Guardianship

The legal guardian of a child is the father. The Druze Code establishes the right of the father to have guardianship of his children until they reach the age of majority at eighteen. If the guardian abuses his right, for example mismanages the assets of the child, the court can appoint a *wasi*.

In Hanafi and Jaafari law the father is the guardian of his legitimate children.

Access

According to the law applied to Sunnis in Lebanon, there are no specific rules with regards to the right of contact between parents and children. However, this issue is usually ruled on as part of a divorce or custody decision. Neither the father nor the mother have the right to remove a child during the period of the mother's custody, although the mother is permitted to travel with the child if it is to the place where she was born and where she contracted the marriage.

According to Druze family law the custodian may not leave the country of the father's residence without his permission. If the father is deceased the court can grant the mother permission to leave the country with the child. The father may not remove the child during period of the mother's custody unless she has remarried.

Non-Muslim Family Law

Greek Orthodox

A child is legitimate if born within marriage. The father has the right to the guardianship of a legitimate or adopted child until the age of majority, followed by the paternal grandfather. He will lose this right if he is proven to be unfit to care for the children. In the event of divorce the father has custody unless a female child is under the age of nine and a male child is under the age of seven, or if the father is unable to fulfil the role of custodian, or if he was at fault for the divorce. In these circumstances the mother is the custodian.

Armenian Orthodox

A child is legitimate if born within marriage at least eighty days after its conclusion and no more than three hundred days after the dissolution of the marriage. If a child is born outside of marriage it will be considered to be legitimate if the parents are subsequently married and a judicial declaration is obtained. During the marriage both parents have equal parental authority over the children. In the event of separation the father has the most right to the guardianship of a legitimate child until the age of majority. He will lose this right if he is proven to be unfit to care for the children or if the female child marries.

In the event of divorce the mother has custody until a female child is nine and a male child is seven. The court has the power to increase or decrease this period in the interests of the children. Custody is also the right of the mother if the divorce was instituted by the father, or if there are legal reasons that deny the ability of the father to raise his children. If the court considers that neither of the parents are suitable to raise the children, a custodian can be appointed by the court according to the best interests of the children.

Syrian Orthodox

The normal period of custody lasts until seven for a male child and nine for a female child. In case of divorce the mother has the most right to custody unless she was at fault for the divorce or the father is deceased and she is not

of the Orthodox faith. If the mother is deceased or unable to be the custodian then custody passes to the father unless he was at fault for the divorce or is of bad character. The father is the guardian as long as he is able to fulfil the duties of guardianship. Guardianship would then pass to the father's appointed guardian, followed by the grandfather.

Evangelical Church

A child is legitimate if born at least one hundred and eighty days after the contracting of a valid marriage or within three hundred days after the dissolution of the marriage. A child born more than three hundred days after a dissolution is illegitimate unless recognised by the husband. A child born outside of a marital relationship is legitimised by the subsequent marriage of the parents, as long as neither of the parents were married at the time of conception. The guardian of an illegitimate child is the mother. The guardian of a legitimate child is the father, as long as he has the capacity to fulfil his duties. The father may appoint a guardian in his will. If he does not the court can appoint a guardian according to a specified order. This order gives priority to the mother.

The period of custody ends when a female child reaches the age of nine and the male child reaches the age of seven. The mother has the most right to custody as long as she is of good character, is able to care for the child and has not remarried. If the mother cannot perform the role of custodian then custody is awarded to the father or the person he nominates.

Catholic

A child conceived outside marriage is illegitimate. The father has the primary right to guardianship of legitimate or adopted children until they reach the age of majority or marry. He can lose guardianship if he abuses the children, neglects his duties as a guardian to raise and educate the children, or if he leaves the catholic faith. If the father is not able to fulfil the duties of guardianship the mother becomes the guardian. There is no specified period of custody and the innocent party in the divorce is usually granted care of the children.

Jewish Community

The mother has the right to the custody of her children until the male child is six years old and until the female child marries. While the mother has custody she may not travel with the child outside of the country of the father's residence. If the mother is unable to fulfil the role of custodian then custody passes to the father. The remarriage of the mother does not give the father priority in custody and a male child cannot be forced to live with the father if he prefers to remain with the mother at the end of the custody period. Similarly, a female child cannot be prevented from going to live with her father or brothers instead of her mother, should she so wish.

The father is the guardian of the children, followed by the grandfather and mother.

Nationality

The father automatically transmits his nationality to his child. A Lebanese mother can pass on her Lebanese nationality if the father is naturalized as a Lebanese citizen.

Leaving the Jurisdiction

A minor must have the permission of both parents in order to obtain a passport. Once a passport has been obtained it is not necessary to obtain permission to travel since permission is deemed granted. However, a father may place a hold on his wife and child with immigration. This is an administrative procedure and does not require a court order.

Other Significant Legislation

Lebanon ratified the UN Convention on the Rights of the Child in 1991 without reservation.

Lebanon has bilateral agreements with France, Canada and the USA on issues related to international child abduction.

Adoption is permitted under Christian law but is not recognised under Islamic law.

Contacts

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