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OMAN

Overview

Oman administers a system of Sharia law, which operates alongside those compatible laws of Oman that are published in the Official Gazette. The ultimate authority in Oman rests with the Sultan and legislation is promulgated by Royal Decree. Pursuant to these Royal Decrees are Ministerial Decisions and Executive Regulations, which are issued from time to time by the administrative units of the Government of the Sultanate of Oman. The Basic Law, which is of a constitutional nature, was promulgated in 1996 by Royal Decree 101. Article 2 of this law states that “Islam is the religion of the State and Islamic Sharia is the basis of legislation.” Oman has a Muslim majority who follow the Ibadi School of Islamic Law. The Ibadi School is a minority group within Sunni Islam. There are also other Sunni and Shia minorities and communities of Christians and Hindus.

Article 77 of the Basic Law reads that all existing legislation remains in force as long as it is compatible with the provisions of the Basic Law. A Personal Status Law was introduced by Royal Decree 32 of 1997, which addresses some aspects of family law, including marriage contracts, divorce, the rights and obligations of spouses, maintenance obligations, the nursing of children, guardianship and inheritance provisions.

Much of the legislation in Oman is consistent with that in force in other Gulf Cooperation Council (GCC) countries and also shows a considerable degree of Egyptian and civil law influence. Additionally, there are particular examples of legislation in Oman that demonstrate a common law influence, of which the Banking Law (Royal Decree No. 114/2000) is probably the most important example. However, there is currently no formal principle of precedent in Oman.

Court Structure

The Royal Decree 90/1999 established the present structure of the judiciary in Oman. There are four levels of courts. At the first level is the Court of Summary Jurisdiction. This is a primary court for minor matters. Cases are presided over by one judge. At the next level is the Court of First Instance. Matters are heard by three judges in these courts. Cases can be appealed to the Courts of Appeals. At the apex of the system is the Supreme Court.

Foreign Orders

Foreign orders can be enforced according to Chapter Four of Decree 29/2002 the Law of Civil and Commercial Procedure. A litigant may make reference to a decision of a court of another State and the court has discretion to take this order into consideration. The order to execute the foreign judgement should be requested from the court of first instance of the jurisdiction where execution is to be enforced. The order may only be executed if it meets the following conditions:

1. The judgement must be a final order that is not based on deception, which was passed by a competent judicial authority in accordance with international jurisdiction rules applicable in the country where the original order was issued.
2. All parties should have been summoned and properly represented in the case.
3. It must not contradict any laws in force in Oman.
4. It must not contradict and order issued previously by an Omani court or violate public policy or conduct.
5. It is required that the relevant foreign court recognises Omani court orders.

In practise it may not be possible for a foreign parent to request that an Omani court mirror a residency or contact order made in a foreign jurisdiction on identical terms and an independent application would need to be made to the Omani court.

Filiation

Paternity is established by a valid marriage, a declaration by the father or other proof. The concept of illegitimacy is recognised in Oman but there are very few written provisions that relate to the rights or treatment of

illegitimate children. Article 212 of the Criminal Law, issued by Royal Decree No. 7/74 states that any father or mother shall be liable to imprisonment from ten days to three months, and a fine not exceeding 10 Rials Omani if they desert their child in a needy state, whether legitimate or not.

Custody

Article 125 of the Omani Personal Status Law, Royal Decree 32/1997, (OPSL) defines custody as the provision of sustenance to a child, bringing it up, and looking after it without prejudice to the rights of the guardian. The custodian must be mature, adult, honest, able to raise the child and safeguard the child's interests and be free from contagious diseases. Article 130 establishes that the parents have joint care of any children while they are married. The Law considers that spouses have a joint duty and responsibility to establish a stable family.

If the parents are separated the mother has the most right to the custody of the children, although the court will seek to place the child according to his or her best interests. According to Article 129 custody of a male child continues until he attains the age of seven. Custody of a female child continues until she attains puberty, although the judge may use discretion to extend this in the best interests of the child. If the mother is a non-Muslim the court may shorten the custody period, in the best interests of the child.

After the mother the priority for custody is awarded according to the following order; the father, the mother's mother, the child's aunt, his father's grandmother, great grandmother, his sister, his mother's aunt (on the mother's side), his mother's aunt (on the father's side), his aunt (father's side), his father's aunt (father's side), his father's aunt (mother's side), his brother's daughter, and his sister's daughter.

According to Article 127(a) a female custodian will lose custody if she remarries a stranger to the child, unless the court decides that it is in the best interests of the child to remain with her. Custody will also be lost if the custodian does not raise the child in accordance with religious standards, has waived their right to custodianship for a year without a valid excuse, or if she removes the child to a place that prevents the guardian from having access to the child. Minors who depend solely on their mother will not be

separated from her. If the custodian is male he must have a wife who is capable of performing the nursing elements of custodianship and if the minor is female he must be related to her within the prohibited degree.

According to Royal Decree No. 32/97, Article 58 (c), the wife has no right to provide shelter in the matrimonial domicile for her children by another man, except where they have no guardian other than her, or where they will come to harm if they live away from her, or if her husband has accepted their presence in his domicile. He retains, however, the right to change his mind if their presence proves detrimental.

Guardianship

Article 159 of the OPSL reads that guardianship of the person of a minor is the right of the father and then the male agnates in the order of inheritance. Guardianship of the property of the minor is the right of the father only. A guardian must be sane, adult, Muslim, honest and able to carry out the duties of guardianship. The father may appoint an executor to manage the affairs of a child. An executor must be a Muslim (if the minor is a Muslim), competent, honest and may be male or female and may be a group of people or an individual. If there is more than one executor, the judge may restrict guardianship to one of them as long as this would serve the interests of the person under guardianship.

The executor must not have been convicted of theft, fraud, counterfeiting, or a crime against public morality. The executor must not have been declared bankrupt, not have been dismissed from the role of guardianship, not be involved in a judicial dispute with the minor, nor in any family dispute that might endanger the interests of the minor. The executor must adhere to the terms and duties entrusted to him by means of the guardianship document, unless these contradict the law. Implementation of guardianship depends on the acceptance of the executor. The fact that the executor has assumed responsibilities is deemed acceptance of the guardianship.

A minor attains full capacity to manage his/her affairs upon turning eighteen.

Access

According to Article 137 of the OPLS if the child is in the care of one parent the other has visitation rights. Neither parent has the right to bar the other parent from having contact with the child. If no agreement can be reached a court order can be sought. A child may not stay the night away from the custodial home unless the court decides otherwise. Article 90 of the personal law states that after divorce has occurred, the parties concerned can request that the judge issue an order specifying visitation rights. This article confirms that orders in this respect are supported by the force of law. If one party objects to the order, they may appeal against it.

Non-Muslim Family Law

The OPSL applies to all Muslims regardless of nationality. Non-Muslims are governed by their own laws in accordance with Article 282 of the OPSL, unless they submit to the authority of the OPSL.

Nationality

An Omani father will pass on his nationality automatically to his children. An Omani mother may pass on her nationality in limited circumstances.

Leaving the Jurisdiction

A mother cannot travel with her child without the permission of the father. If the father refuses permission she can apply to the court for permission to travel.

A foreign woman residing in Oman who is subsequently divorced by her Omani husband will lose her visa unless she can secure an alternative sponsor.

International Law

Oman signed the UN Convention on the Rights of the Child in 1996, with reservations to articles 9(4), 21, 7, 14 and 30. Royal Decree 41/2004 contains provisions regarding the joining of the two optional protocols. Article 2 of Decree 41/04 grants the concerned authorities the power to take action in order to join the aforementioned protocols, in accordance with their

provisions and in conformity with the Sultanate's reservations with regard to the Convention.

Parental Child Abduction

According to Article 214 of The Criminal Code, Royal Decree 7/74, the removal of a child, even with the consent of the child, away from the custodian or guardian is an offence punishable by a prison sentence of six months to three years and a fine of ten to five hundred Omani Rials. If the minor was under the age of thirteen when he/she was abducted and was taken by coercion or deceit then the perpetrator shall be liable to imprisonment from three to fifteen years. It should be noted however that the Criminal Code is considered to be “aged” legislation and therefore its provisions do not necessarily reflect current practise.

Article 215 of the Criminal Law, Royal Decree 7/74, states that anyone, including the mother or father, who does not deliver a child to the person awarded guardianship by the court is liable to imprisonment from three months to two years and a fine from ten to two hundred Omani Riyals. The mother may be exonerated from any penalty if it established that she believed he had the right of custody. The fine may be commuted if the child is delivered or returned before the issuance of the judgement.

Contacts

Ministry of Justice
PO Box 354
MUSCAT 112
OMAN
Tel: 00 968 697699
Fax: 00 968 602 725

Ministry of Social Affairs and Labour
PO Box 560
Muscat PC 113
OMAN
Tel: 00 968 602444

Ministry of Interior
PO Box 127, Ruwi 112,
Sultanate of Oman
Oman,
Fax: 00 968 693 330/602 244

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