

DISCLAIMER: This document was produced in 2005 and is a summary of the laws of Algeria that appertain to international parental child abduction, contact and relocation as they were at that time. **reunite** International Child Abduction Centre cannot vouch for the accuracy of this information for use in litigation and it is not intended to provide case specific advice.

## **UNITED ARAB EMIRATES**

### **Overview**

The United Arab Emirates (UAE) is a federation of 7 Emirates (princely states) including Dubai, Abu Dhabi, Sharjah, Ras al Khaima, Umm al Qawain, Fujaira and Ajman. There is a large expatriate community in the UAE but of the UAE nationals the majority are Sunni Muslims and a minority are Shia Muslims. The 1971 Constitution made permanent in 1996 reads in Article 7 that Islam is the State religion and that Islamic law is a principal source of legislation.

The personal status law applied in the UAE is uncodified Islamic law. Therefore, classical law is applied according to whether the father is a Sunni or Shia Muslim and to which school of law has the most influence. The dominant school Islamic jurisprudence varies within each of the Emirates. In Dubai Maliki is the dominant school of jurisprudence, whereas Hanbali principles have the most influence in the majority of the other Emirates.

There is no restriction on foreign nationals making an application to a Sharia Court but a UAE national must be engaged to represent the applicant in court.

### **Foreign Orders**

Foreign orders cannot usually be enforced.

### **Court Structure**

The UAE has a federal court system. The federal system includes Federal Courts of First Instance, two Federal Courts of Appeal and a Federal Supreme Court. Each Emirate has their own Sharia Courts, which are

parallel to the federal courts. Dubai and Ras al Khaimah have not merged their courts into the federal courts system. Family matters are heard by the Sharia courts, which are presided over by Islamic judges (Qadis). Civil Judges also refer to Islamic principles in the absence of a clear legislative text.

### **Filiation**

The law applied in this case would again depend on the school of jurisprudence that is applied. Generally, a child born outside of a valid or irregular marriage is illegitimate and ties to the father are not established. The child must also be born at least 6 months after the date of marriage for paternity to be automatically established and no more than 4 years after the separation of the parents (according to Malaki and Hanbali principles). However, if there is no evidence to show that a man is not the father or that the child is the offspring of an illicit relationship legitimacy can often be established by the father by means of the doctrine of acknowledgement.

### **Custody**

Because uncodified classical law is applied in family matters, the way in which custody matters are decided would depend on the school of Islamic law followed. According to Malaki principles a mother would normally have custody of her children following a divorce from the father until a female child marries and until a male child reaches puberty. Under Hanbali law the period of the mother's custody is not fixed since children can be given a choice as to whom they will live with when they reach the 'age of discretion'. This is not a fixed age since it is interpreted as being the age at which a child can discern in matters of religion and understand right from wrong. The minimum age is considered to be seven. The voice of the child may be heard in court if he/she has reached the age of discretion. However, the wishes of the child, if heard, are not binding on the court. In the case of Shia law custody normally lasts until the age of two for a male child and seven for a female child.

In order to qualify for custody the mother must reside within the UAE, be of good character and she must raise the child as a Muslim. If she remarries she would ordinarily lose custody of her children, although Judgement No. 8/97 Dubai Court of Cassation allowed a mother who had remarried to retain custody of her children. However, this was due to a written agreement

between the parents in which the father had agreed to forgo the right to custody if the mother were to remarry.

If the mother is non-Muslim the custody period may be shortened to five years of age and it can be lost completely if it is feared that the children will not be raised as Muslims. Therefore, a non-Muslim mother will often not be given custody of her children.

### **Guardianship**

The father is the legal guardian of the person and property of his children.

### **Access**

Non-custodial parents are guaranteed visitation rights but unless the father and his family co-operate it may be necessary to seek approval from the court. Contact can be denied if it can be proved that the mother is of 'immoral' character i.e. has behaved contrary to Islamic morality. If contact is permitted it is unlikely to be allowed outside of the UAE. The courts are often unwilling to interfere with the authority of the father over his children since his duties to the children are religious obligations as well as legal obligations.

### **Nationality**

According Article 2 of the Federal Passports and Nationality Act No.17 of 1972 UAE nationality is acquired by a child born to a man of UAE nationality whether in the UAE or abroad, to a mother of UAE nationality whether born in the UAE or abroad if no legal relationship is established with the father or if he is unknown or stateless, or by a child born in the UAE to unknown parents.

### **Leaving the Jurisdiction**

According to Article 37 of the Federal Passports and Nationality Act it is not permissible to grant a married woman an individual passport except with the permission of the husband, nor a minor without the permission of the legal representatives. A parent can place a travel ban on their children to prevent them from leaving the country and a mother with custody must seek

permission of the father to travel with the child. A Sharia Court cannot grant permission for permanent removal of a child by the mother to a foreign jurisdiction if the father does not agree.

### **International Law**

The UAE signed to the UN Convention on the Rights of the Child in 1997 entering reservations against Articles 7, 14, 17 and 21.

### **Child Abduction**

Child abduction is an offence in the UAE and a mother who had previously been awarded custody would lose custody of her children if she attempted to remove a child away from the father because he is the guardian of the child.

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