Algerian Family Code

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1 – Marriage

Marriage is a legally recognized contract between a man and a woman.

1-1 – Capacity to marry

Marriage capacity is considered valid upon reaching the age of 19. However, a judge can grant an age exemption for a reason of interest or in case of necessity.

1-2 - Polygamy

It is allowed to marry more than one spouse if the reason is justified.

The husband must inform his previous spouse and the future spouse and submit a marriage authorisation application to the presiding judge of the tribunal of the conjugal house area.

The president of the tribunal can authorise the new marriage if he/she notes their consent and that the husband has proven the justified reason and his capacity to offer equality and the necessary conditions for marital life.

1-3 – Mixed marriage

A mixed marriage authorisation is issued by the Wali (local governor) of the husband and wife’s place of residence.

The file must include the following documents, depending on the case:

1-3-1- For the Algerian part

- An application form provided by the administration (DRAG);
- Three (3) ID photos;
- One (1) birth certificate (n° 12);
- Non marriage or remarriage certificate;
- Copy of the national identity card;
- Resident card.

1-3-2- For the non-resident foreign part

- Three (3) ID photos;
- Non marriage or remarriage certificate;
- Three (3) certified copies of birth certificate;
- Copy of the passport with valid entry visa;
- Accommodation certificate;
- Certificate of conversion to Islam for non-Muslims (only for men).

1-3-3- For the resident foreign part

- Three (3) ID photos;
- Three (3) certified copies birth certificate;
- Single status certificate (non-marriage and remarriage certificate)
- Copy of the valid residence permit for the foreigner.

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1 Please see “Marriage in Algeria– info sheet “prepared by the British embassy in Algeria for more information on mixed marriages procedures
Registration in the registry office cannot be made without marriage authorisation.

Please see “Marriage in Algeria– info sheet “prepared by the British embassy in Algeria for more information on mixed marriages procedures.

**1-4 – Elements that constitute a marriage**

Marriage is entered into by consent of the future husband and wife, the presence of the marriage guardian and of two witnesses and the issuance of a dowry.

Consent results from request by either part or consent of the other using any term to indicate that the marriage is legal.

The request and consent of a disabled person are validated when expressed in any written or gestural form indicating marriage in the usual language or custom.

Entering into marriage for a woman is the responsibility of her guardian who is either her father or one of her close relatives.

A judge is the guardian of a person who has no relatives.

The marriage guardian (Wali) cannot prevent the person placed under their guardianship to enter into the marriage if she wishes it and if such marriage is advantageous. In case of objection, the judge can authorise the marriage.

However, the father can object the marriage of his virgin daughter if that is in the interest of the daughter.

A Wali (marriage guardian), whether the father or another, cannot force a person placed under their guardianship to get married and cannot force them into marriage without their consent.

The dowry is what is paid to the future wife in money or any asset that is legally licit. The dowry is her property and she can freely own it.

The marriage agreement must indicate whether payment of the dowry is immediate or subsequent.

Marriage consummation or death of the husband entitles the wife to her dowry in full.

The wife is entitled to half of the dowry in case of divorce before marriage consummation.

If, before the marriage consummation, the dowry result in a dispute between the spouses or their heirs and no one provides evidence, a decision is taken under oath in favour of the wife or of her heirs. If such dispute takes place after marriage consummation, a decision is taken under oath in favour of the husband or of his heirs.

**1-5 – The Deed and proof of Marriage**

The marriage deed is issued before a notary or a duly authorised civil servant.

The spouses can stipulate in the marriage agreement any clause they deem relevant unless it is contrary to the provisions of the law.
The future spouse can be duly represented by a representative under a power of attorney when entering into the marriage deed.

Marriage is proved by the issuance of copy of marriage record from the registry office. In the absence of a registration, it is made valid by a judgment if, however, the constituting elements of marriage are gathered. Once this formality is completed, it is registered in the registry office.

1- 6- Concerning recognition abroad of a marriage registered in Algeria:

In general, it is the internal law of each country that defines terms for recognising and accepting foreign marriage deeds, however, in Algeria, the law sets forth that a marriage entered into abroad between Algerians or between Algerians and foreigners is valid if celebrated in the usual forms of that country provided that the Algerian side has not breached the fundamental conditions required by their national law in order to enter into such marriage agreement.

2 – Spouse rights and obligations

The obligations of spouses are as follows:

1. Maintain marital bonds and duties of joint life,
2. jointly contribute to protecting the interests of the family, protecting the children and their sound upbringing,
3. Maintain kinship and good relations with parents and relatives.
4. Cohabitation in harmony and mutual respect in indulgence.
5. Mutual discussion in managing family affairs and keeping intervals between childbirths,
6. Respect their respective parents and relatives and visit them.
7. Each spouse is entitled to visit and host their parents and relatives in goodwill.

3 - Filiation:

Filiation is established by valid marriage, the recognition of paternity, apparent or flawed marriage and any marriage cancelled after consummation.

A child is affiliated to their father by legal marriage, the possibility of marital bonds unless paternity is denied as per the legal procedures.

4 - Dissolution of marriage

4.1- Divorce

As per articles 48, 53 and 54 of the Algerian Family Code (AFC), divorce can be declared (art.48):

4-1-1- Upon request by the wife in return of payment of an amount of money (Khol)

Compensation of terminating the marital bond, the amount cannot exceed the value of the parity dowry. Khol is a right for a wife and does not require the husband’s agreement.
4-1-2- Upon request by the wife for the following reasons (art.53 of the AFC):

1. Failure to pay alimony decided by judgment unless the wife has lived in poverty with her husband when entering into marriage.
2. For a disability preventing the achievement of the marriage purpose, in other words, sterility or impotence of the husband.
3. In case of the husband’s refusal to share the bed with the wife for more than four months.
4. If the husband is sentenced further to an offence likely to dishonour the family and render living together impossible.
5. In case of absence for more than one year with no valid excuse or without alimony.
6. For breaching the provisions concerning a polygamy marriage application (art.8 of the AFC).
7. For any seriously reprehensible immoral fault (Eg. Abuse).
8. For persisting disagreement between the spouses.
9. For violating the clauses set forth in the marriage agreement.
10. For any legally recognised prejudice.

4-1-3 – By mutual consent of the spouses: there are two types:

Divorced based on a joint petition and divorce requested by one and accepted by the other.

4-1-4 – By will of the spouses: It is called judicial repudiation

The husband is entitled to dissolve the marriage without justifying his request. The wife can obtain financial compensation if the husband has misused his capacity to divorce (art.52 of the AFC).

- Procedure:

The divorce petition must be addressed to the clerk of the tribunal personal status’ section in the area of residence of the spouses or of the marriage registration place.
Divorce is established by judgment after several conciliation attempts during a period that does not exceed three months starting from the petition filing date (art.49 of the AFC).
The mother and the child are kept in the marital house during the divorce procedure (art.72 of the AFC). Once the divorce is pronounced, the father has to provide decent housing or rental costs.
The transcription of the divorce on the registry office books is made at the diligence of the prosecutor.
Judgments delivered on divorce cases are not subject to appeal except on their material aspects or in terms of child custody.

4-2 – Consequences of divorce

4-2-1 – Right to custody (HADANA)

The right to custody (Hadana) consists in the provision, school attendance and upbringing of the child in the religion of his/her father as well as the protection of his/her physical and moral health.
The holder of this right must be fit to providing it. In case of divorce, as per article 64 of the AFC, the right to custody is given in the following order «first to the child’s mother, then to the father, then to the maternal grandmother, then to the paternal grandmother, then to the maternal aunt, then to the paternal aunt, then to the closest relatives to the best interest of the child».
The parent who does not have custody has a visitation and accommodation right that must be respected under a sentence of a 5-years prison.

4-2-2 - Child’s exiting the Algerian territory in case of divorce:

When the child’s parents are married, the father is automatically the guardian, although parents share joint custody of their children. When the parents are divorced, the holder of the custody right also exercises guardianship. The mother, who, by divorce judgment, has the custody and guardianship of children, does not need paternal authorisation to leave the Algerian territory with her under-age children; she must produce to the border police officers a copy of the divorce judgment.

- In regards of the custody rights in mixed-marriages and for residents abroad:

As per the Algerian law, when one of the parents resides in a non-Muslim country, the right to custody is given to the parent who lives in Algeria. Also, when the parents live abroad, the right to custody can be exercised abroad. The Supreme Court however, considers in another order issued on 13/03/1989 under number 52221 that the mother has priority in the right to child custody even if she is not Muslim.

NB: According to practice in Algeria, the foreigner who is resident in Algeria has more chance to obtain child custody.

4-2-3 – Child support

Child support is due if the father is not entitled to custody. He must pay child support to the child depending on his resources. Voluntary failure to pay child support is considered as abandoning the family and can lead to a three-year prison sentence and a fine (art. 331 of the Algerian Criminal Code).

Child support is due until a boy reaches the age of majority (19 years old) and until consummation of marriage of a girl even of age, unless she is capable of providing for herself (art.75 of the AFC). Art. 78 of the AFC: child support consists in food, clothing, healthcare, housing or rental cost payment and anything considered necessary by use and by custom. The amount of child support can be revised one year after the divorce judgment issuance (art.79 of the Code).

4-2-4 - Right to housing:

since the reform of the Algerian Family Code, the ex-husband must provide decent housing to the mother whom custody right goes to. Art. 72 of the AFC: in case of divorce, it is up to the father to provide, for the exercise of custody, to the beneficiary of the latter, decent housing or rental costs.

A wife granted custody is maintained in the marital house until the father executes the court decision regarding housing.

4-2-5 – Legal representation of guardianship

Further to the last amendment of the Family Code, the following applies: it is the parent who has custody who exercises guardianship on the child (art.87 of the AFC). When the mother is given custody, she becomes the only guardian of her child.

Any person fully or partially incapable due to their age, dementia, imbecility or lavishness is legally represented by a legal guardian or one appointed by the family.

Acts by any person who has not reached age of discernment (adulthood) due to their young age are nil.
Acts of a person who has reached the age of discernment are valid in case they are advantageous and nil if they cause them harm.
Such acts are subject to the authorisation of the legal guardian or their testamentary guardian if uncertain between advantage and prejudice.
In case of dispute, it is referred to a court.

The judge can authorise the person having reached the age of discernment to have all or part of their assets upon request of any interested person. However, the judge can withdraw such decision if that is justified.

Acts of a person with imbecility or lavishness made under one of these conditions are nil.
Any person of age not subject of such conditions is fully capable.

4-2-6 - Interdiction

Any person of age with dementia, imbecility, lavishness or subject of one of these conditions is banned.
Interdiction is decided upon request of the parents, of a person with interest or the public prosecution.
Interdiction must be decided by judgment. The judge can call for experts to establish the reasons.
If the banned person does not have a legal or testamentary guardian, then the judge shall appoint in the same interdiction judgment, a curator who will manage the banned person and their affairs without prejudice to the provisions of article 100 of this law.

A person subject of an interdiction application must be able to defend their interests. The court appoints a defender if deemed relevant.

The interdiction judgment is subject of all ways of appeal and must be made public.
All acts of the banned person after the interdiction judgment are nil. Acts before such judgment are also nil if the interdiction reasons are obvious or known when done.

Interdiction can be lifted by judgment when the reasons that led to it no longer exist and based on the banned person’s request.

4-2-7 – Legal care (KAFALA)

- Legal care is the commitment to voluntarily care for the education and protection of an underage child as would a father do for his son. It is established by a legal deed.

- Legal care is granted by a judge or notary with the consent of the child when the latter has a father and a mother.

The holder of the legal care right (kāfil) must be Muslim, reasonable, honest and capable of caring for the child (makfoul) and protecting them.

The child can be of known or unknown filiation

The child must keep their original filiation if he/she is of known parents.
Legal care confers to the beneficiary legal guardianship and entitles them to the same family and school allowances granted to legitimate children.

Granting the right of legal care ensure the management of the child’s assets resulting from inheritance, legacy or gifts to the best of the child’s interests.

The legal care awardee can bequeath or give by way of gift, within the list of one third of their assets, to the child. Beyond such third, any provision in the will is nil and void without the consent of the heirs.

If the father and the mother or one of them requests that the child returns to their guardianship, it is up to the child, if in age of discernment, to opt for return to their parents or not.

The child can only be returned based on an authorisation issued by a judge considering the child’s interest if the latter is not in age of discernment.

The legally-cared for child return lawsuit must be filed at the court that granted it after notification of the prosecution. In case of death, the legal care right is transmitted to the heirs if they undertake to provide it. In the opposite case, the judge awards the custody of the child to the relevant institution in terms of assistance.

4.2.8 – Inheritance

The bases for inheritance are kinship and the status of spouse.

Inheritance occurs upon actual or presumed natural death, the latter is duly established by judgment.

The required conditions to claim inheritance are:

- To be alive or at least conceived when entitled to inheritance.

- to be linked to the deceased by a relationship that confers the status of inheritance,

- does not have an incapacity to inherit

If two or more people die without determining the order of their death, none of them inherits from the other whether they die in the same accident or not.

Marriage confers to spouses a mutual inheritance capacity even if not consummated.

The inheritance capacity ceases once the marriage is established as null and void.

When one of the spouses dies prior to the divorce judgment issuance or during the period of legal retreat after divorce, the surviving spouse has the inheritance capacity.

An heir who is absent but not legally declared as deceased is considered alive as per the provisions of article 113 of this law.
A conceived child is not entitled to inheritance unless he/she is born alive and viable when inheritance occurs. Any child mewls or gives an apparent sign of life is considered to be born viable.

The following are excluded from inheritance:

1°) a person guilty or accomplice of voluntary homicide of the deceased;

2°) guilty of capital accusation by false statement leading to a death penalty court decision and execution of the deceased;

3°) guilty of not reporting to the relevant authorities the murder or premeditation of the deceased.

Excluding an heir from the inheritance capacity for any of the reasons mentioned above does not lead to excluding other heirs.

An heir who perpetrated involuntary homicide of the deceased keeps their inheritance capacity without being entitled to part of the ransom and compensation.

People with anathema and apostates are excluded from inheritance.

4-2-8-1 – Liquidation of inheritance

The following is deducted from inheritance

1°) Funeral and inhumation costs within the acceptable limits,

2°) payment of duly established debts of the deceased,

3°) Assets subject of valid bequest.

In the absence of persons to whom legacy devolves by law or universal inheritors, inheritance goes to cognate heirs (daoui al arham). In the absence of the latter, inheritance goes to the public treasury.

In case of liquidation of an inheritance.

In case of presence of an under-age child among heirs, sharing out is only made by the court.

If the under-age heir does not have a legal or testamentary guardian, then any interested person or the public prosecution have the capacity to request the court to settle the inheritance and appoint a curator.

It is up to the president of the court to decide the affixing of seals and cash and valuables deposit and give a ruling on the request.

A summary procedure has to be implemented in terms of inheritance settlement particularly in the deadlines and diligence of the judgment that gave a ruling on the case and review all appeal methods.

4-2-8-2 – Waqf assets by way of gift.
A - Wills

A will is a deed by which a person transfers an asset free of charge during the time when such person no longer exists.

Will provisions cannot exceed the limit of one third of the assets.

Exceeding one third of the assets is only executed if the heirs agree to it.

A-1 -Testator and legatee

The testator must be in full possession of their mental capacities and aged at least nineteen (19).

A conceived and viable child benefits from a will and it is only effective if the child is born alive and viable. In case of birth of twins, the legacy is equally shared regardless of their gender.

The legatee guilty of voluntary homicide on the person of their testator is denied the legacy.

A will for an heir is only effective when co-heirs agree to it after the death of the testator.

A-2 -Assets likely to be bequeathed

The testator can bequeath any assets that they own or that they will own prior to their death or any property in usufruct.

A-3 -Validation of a will

A will is made valid by:

1°) a declaration by the testator before a notary who issued an authentic deed
2°) a signed judgment accompanying the original property deed in case of force majeure

A- 4 -Effects of a will

A will is expressly or tacitly revocable.

The express revocation of a will results from a declaration made in the same way of its validation.

Revocation of a will results in from any process allowing to deduct the intention to revoke it.

Pledging a bequeathed object does not lead to a will revocation.

When a will is made in favour of a person then for a second person, the legacy becomes the property of both legatees.

When the will is made in favour of two given people without an indication from the testator on the share going to each of them and one of them passes away when the will is issued or after and before the testator’s death, the entire legacy goes to the surviving legatee.
On the contrary, the surviving legatee only receives the share allocated to them by the testator.

The legacy with usufruct for an unlimited period of time is considered as a life annuity and ceases with the legatee’s death.

The express or tacit acceptance of the legacy occurs upon the testator’s death.

Heirs of the deceased legatee, prior to making a decision on the legacy made in their favour, exercise the right to accept or renounce it.

If the legacy comes with a condition, the legatee shall be entitled to the legacy when the required condition is met. If the condition is illicit, then the legacy is valid and the condition is null and void.

A will is valid between people of different faiths.

The will becomes null and void when the legatee dies before the testator or when the legatee waives the legacy.

**B – Living bequest**

A living bequest is the transfer of the ownership of an asset free of charge to another person.

The donor can require from the donee to complete a condition that makes the living bequest final.

The donor must be in full possession of their mental capacities, aged at least nineteen (19) and not subject of any interdiction.

A living bequest made by a person during the course of a disease that led to their death of suffering a serious disease or in a dangerous situation is considered as a legacy.

The living bequest can concern all or part of the donor’s assets.

They can bequest a given asset, a usufruct or a credit to a third person.

The living bequest act is made by an offer and acceptance and is completed by entering into possession and compliance with the provisions of the order pertaining to the organisation of notary’s profession in terms of buildings and the special provisions concerning movable assets.

If one of the conditions listed above is not met, then the living bequest is null and void.

If the asset subject of the living bequest is in the hands of the donor prior to the liberality, then entering into possession is deemed completed. In case such asset is in the hands of other people, the donor must be donee and must be kept informed of the living bequest in order to enter into its possession.

In case the donor is the guardian of the donee or their spouse, or if the item is undivided, the issuance of the notarised deed and completion of administrative formalities are considered as entering into possession.
A living bequest made in favour of a conceived child is not effective unless the child is born alive and viable.

The donee enters into possession of the subject of the living bequest by themselves or through a representative.

In case the donee is an under-age child or subject of interdiction, entering into possession is made by their legal representative.

Fathers and mothers are entitled to revoke a living bequest made to their child regardless of his/her age except in the following cases:

1°) If made for the donee’s marriage;
2°) If made to the donee to allow them to ensure a loan or pay a debt;
3°) If the donee has received the donated asset by way of sale, liberality or if the asset has perished between his hands or if he/she made transformations to it that made it change its nature.

A living bequest made for public utility is irrevocable.

C – Mortmain assets (waqf)

The creation of a mortmain asset (waqf) consists in freezing a property or of an asset in favour of any person for life and its living bequest.

The creator of a mortmain asset (waqf) can reserve the usufruct as life annuity prior to its final bequeath to the beneficiary.

The creator of a mortmain asset (waqf) and the beneficiary are subject to the same rules that apply to the donor and donee as per articles 204 and 205 of this law.

To validly create a mortmain asset (waqf), the asset must be owned by the creator and not objected even if undivided.

Validation of the creation of a mortmain asset (waqf) is made in the same methods that apply to those required in article 191 of this law to wills.

The requirements made by the creator of a mortmain asset are executable apart from those incompatible with the waqf’s legal nature.

These are considered null and void and the waqf persists.

Constructions or plantations made on a mortmain asset (waqf) by usufruct are deemed incuded in the creation of such asset.

The mortmain asset (waqf) continues if it is subjected to changes that modify its nature.

However, if the change produces income, then the latter is used in the same ways as for the initial asset.
Orders, Judgements and decisions issued by foreign courts cannot be executed in the Algerian territory unless they are declared executory by the Algerian courts that check if they comply with the following requirements:

1- Not in breach of competency rules

2- To have acquired the power of a judgment as per the laws of the country where they were issued;

3- Not to be contrary to orders or judgments already issued by Algerian courts as cited by the defendant;

4- Not to be contrary to public order or customs in Algeria.