



British Embassy  
Tunis



# Tunisian Family Law





# Tunisian Family Law

The following document has been prepared by the British Embassy Tunis for the convenience of British Nationals who may find this information helpful. It is a non-official translation of some sections from the Tunisian Personal Status Code and other related laws.

The British Embassy does not assume or undertake any legal responsibility or liability, to you, or those affected, in connection with this document. For any legal issues, you are advised to seek legal advice from qualified practitioners. The British Embassy is not one of these.

# CONTENT

<b>1. Marriage</b> .....	4
1.1. Capacity to marry.....	4
1.2. Polygamy.....	4
1.3. Mixed marriage.....	4
1.3.1. Documents required for both the Tunisian and the foreign parties.....	4
1.3.2. Documents required for the Tunisian party.....	5
1.3.3. For Documents required for the foreign party.....	5
1.4. Elements that constitute a marriage.....	5
1.5. The deed and proof of marriage.....	6
1.6. Joint property regime between the spouses.....	6
1.7. Impediments.....	7
1.7.1. Permanent impediments.....	7
a-Permanent impediments as a result of blood relationships.....	7
b-Permanent impediments as result of marriage.....	7
c-Permanent impediments as result of breastfeeding.....	8
d-Permanent impediments as result of divorce for the third time.....	8
1.7.2. Provisional impediments.....	8
a- Existence of an ongoing marriage.....	8
b- Iddah period.....	8
1.8. Concerning recognition abroad of a marriage registered in Tunisia.....	8
<b>2. Spousal rights and obligations</b> .....	9
<b>3. Spousal disputes</b> .....	9
<b>4. Filiation</b> .....	10
<b>5. Dissolution of marriage</b> .....	10
5.1. Nullity of a marriage.....	10
5.2. Divorce.....	11
• In case of mutual consent by both parties.....	11
• Upon the request of one of the spouses because	

of prejudice suffered at the hands of the other spouse.....	11
• Upon the request of the husband or wife.....	11
5.2.1. Material damage of divorce.....	11
5.2.2. Procedure.....	12
5.3. Consequences of divorce.....	13
5.3.1. Right to custody.....	13
• In regards of the custody rights in mixed-marriages and for residents abroad:.....	13
5.3.2. Children exiting the Tunisian territory in case of divorce:.....	14
5.3.3. Child support.....	14
5.3.4. Right to housing.....	15
<b>6. Legal representation and guardianship.....</b>	<b>15</b>
6.1. Prohibition and emancipation.....	16
6.1.1. Minors.....	16
6.1.2. Dementia and weakness of mind.....	17
6.1.3. Lavishness.....	17
6.1.4. Legal Care (KAFALA and Adoption).....	17
a- Kafala.....	17
b- Adoption.....	18
<b>7. Inheritance.....</b>	<b>18</b>
Liquidation of inheritance.....	20
<b>8. Wills.....</b>	<b>20</b>
8.1. Testator and beneficiary.....	20
8.2. Assets likely to be willed.....	21
8.3. Effects of a will.....	21
<b>9. Donation.....</b>	<b>21</b>
<b>10. Exequatur.....</b>	<b>22</b>
<b>11. Glossary.....</b>	<b>23</b>

# 1. Marriage

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

## 1.1. Capacity to marry

Marriage capacity is considered valid when the two future spouses have reached the age of 18 and are not in one of the cases of impediment provided by law. However, a judge can grant an age exemption for a reason of interest on behalf of both parties or in case of grave necessity.

## 1.2. Polygamy

Polygamy is expressly prohibited under Tunisian law.

Any individual who engages in the union of marriage before the dissolution of their previous/current matrimony is sanctioned by one year of imprisonment and/or a fine, even if the first marriage or the new marriage were not contracted in accordance with the law.

The other partner/ "spouse" involved in polygamy is punished by the same sanctions.

## 1.3. Mixed marriage

Mixed marriage for Tunisian women marrying a non-Muslim foreign national was made legal in Tunisia by the Circular n° 164 of the Ministry of Justice dated September 8th, 2017 abolishing the Circular n° 216 dated on November 5th, 1973.<sup>1</sup> A mixed marriage concluded in Tunisia must obey Tunisian law. The Circular of the Minister of Interior Affairs n° 1/2017 dated September 11th, 2017 provides the necessary paperwork to be submitted by the two parties in order to conclude the marriage contract.

### 1.3.1. Documents required for both the Tunisian and the foreign parties

- A birth certificate for each spouse, the validity of which for Tunisians is 20 days and indeterminate for foreigners;
- A medical certificate;<sup>2</sup>
- A copy of the National Identity Card ("CIN") or any official document proving the identity of the spouses (i.e., passport).

---

<sup>1</sup>Please note that the future spouses might face some challenges in practice as few public officials and notaries still refuse to conclude marriage contracts between a Tunisian woman and a foreigner who is non-Muslim.

<sup>2</sup>A medical certificate delivered based on the law no° 1964-46 dated on November 3rd, 1964 and ministerial decisions dated on July 28 and December 16, 1995.

### **1.3.2. Documents required for the Tunisian party**

- Court authorization for those under the legal age for marriage;
- Authorization of the guardian, or only the mother if she is widowed, is needed for those who are not of legal age to marry. A court order is necessary if the guardian or the mother refuses to give authorization and the minor persists to marry;
- An extract of the spouse's death certificate for widowers;
- A copy of the certificate of divorce or a birth certificate with the mention «divorced», for divorced persons;
- Administrative authorization for security guards, customs officers, National Guard agents and firefighters;
- Ministry of Defence authorization for members of the military;
- Administrative authorization for the diplomatic members.

### **1.3.3. For Documents required for the foreign party**

- Evidence from the consulate or diplomatic mission (i.e., Consular attestation) attesting that the marriage for the foreign spouse is possible;
- Certificate of non-involvement in any other marital relationship for foreigners.

#### **In all cases:**

- The CINs of the witnesses (with satisfaction of all other legal requirements for both witnesses).

### **1.4. Elements that constitute a marriage**

Marriage is entered into by consent of the future husband and wife, the presence of two honorable witnesses, and the determination of a dowry.

A man and a woman can conclude their marriage in person or through a special legal representative appointed by a notarial deed for the clear purpose of marriage.

Note that the matrimonial guardian for adult women does not exist in Tunisian law.

The consent of the future spouses must be clear and needs to be reciprocated by both parties and free of all imperfections. The notary or public official must ask each of them and receive a clear and explicit acceptance in the deed. In case there is any doubt regarding the reception of a clear acceptance, the notary or the public official should seek the assistance of specialists in order to ask and receive the answer of acceptance.

In the case of marriage of a minor, consent of their legal guardian and mother is required. If the consent by both is refused, and the minor persists, it is up to the judge to decide.

In the act of marriage, any conditional clause can be placed. In case of non-fulfilment of these conditions or non-execution of the clauses, the marriage can be dissolved through divorce. This dissolution does not allow for a right to compensation if it occurs before the marriage consummation.

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.

If the dowry has yet to be paid, the husband cannot compel the woman to consummate the marriage. After the consummation, the wife, who is the beneficiary of her entire dowry, can only claim payment. Failure to pay by the husband does not constitute divorce.

The wife is entitled to half of the dowry in case of divorce before marriage consummation<sup>3</sup>.

A prenuptial medical certificate will have to be provided by both parties for the establishment of marriage.

## **1.5. The deed and proof of marriage**

The contract of marriage must be proven by a notarial deed concluded only by either two notaries or the state registrar in the presence of two honourable witnesses.

A notarial deed is necessary to prove the marriage. Any other marriage concluded by a mean other than the one stated above is considered null and the spouses involved in such violation will be sanctioned by three months of imprisonment.

When the marriage is concluded by two notaries, a notification is sent to the competent state registrar within one month and a copy of the marriage act is delivered to the interested parties.

Marriage is noted in the birth certificate of each spouse and can be proven by obtaining a marriage extract from the registry.

## **1.6. Joint property regime between the spouses**

Spouses can opt for the joint property or the separation of property regimes at the time of celebration of their marriage or after the celebration.<sup>4</sup> The power of

---

<sup>3</sup>Please note that the dowry in general is a very small amount of money, in practice. (50 Tunisians dinars or a little bit more or less).

<sup>4</sup>The joint property regime between spouses is regulated by the law no. 1998-94 dated on November 9th,1998.

A notarial deed is mandatory in order to enter into this regime after the celebration of marriage.

attorney to represent one or both spouses while concluding the marriage contract must include the spouse's choice regarding the joint property regime.<sup>5</sup> Spouses are allowed to change the chosen property regime only after two years from the date of their choice. A notarial deed is mandatory to record such change. The change is effective against third parties after getting the judge's approval and registration in the civil register and immovable property register.

The joint property regime covers the immovable property obtained after the marriage or after the conclusion of the joint property agreement. This immovable property must be dedicated for the family use. Immovable property obtained by way of inheritance, donation or will are not included. The spouses can agree to expand the scope of joint property regime to cover other types of property. The choice of the joint property regime cannot affect the rules of inheritance contained in the Code of Personal Status and does not cover the dowry given to the wife.

The joint property regime is dissolved by the death or disappearance of one of the spouses, the divorce, judicial separation of their property or by agreement.

## **1.7. Impediments**

There are two types of impediments in relation to marriage in Tunisia, the permanent and the provisional.

### **1.7.1. Permanent impediments**

Permanent impediments are the result of a blood relationship (family bonds), marriage, breastfeeding, and divorce for the third time between the same husband and wife.

#### **a- Permanent impediments as a result of blood relationships**

The marriage of a man with his ascendants and descendants (mothers and daughters), his sisters and the infinite descendants (the daughters) of his siblings (his brothers and sisters), his aunts and great aunts and great grand aunts is prohibited. This prohibition is explained by the fact that these persons are blood related.

#### **b- Permanent impediments as result of marriage**

A man cannot marry the mother of his ex-wife. Nor can he marry her daughters if the marriage is consummated. This restriction also applies to the spouses of his father and spouses of his sons no matter how distant the bonds are.

---

<sup>5</sup>Please refer to 1.4 for marriage through a special legal representative.

### **c- Permanent impediments as result of breastfeeding**

The same restriction will apply in relation to breastfeeding. Marriage cannot occur between individuals who have been nursed from the same woman as they will be considered siblings by breastfeeding. This restriction only applies if the nursing occurred in the first two years of the child's life.

### **d- Permanent impediments as result of divorce for the third time**

A man cannot marry his divorcee again after the third divorce is pronounced between them.

## **1.7.2. Provisional impediments**

Provisional impediments are a result from the existence of an ongoing marriage and the non-expiration of the viduity period.

### **a- Existence of an ongoing marriage**

It is prohibited for a man to marry a woman whose previous marriage has still not been dissolved. Also, a married man cannot marry another woman before he gets a divorce.

### **b- Iddah period**

Viduity period ("Iddah" in Arabic) is an impediment for a widow and a divorcee. The woman cannot remarry before the iddah period comes to an end. The difference between the widow and the divorcee is the length of the iddah: three months for a divorced woman who is not pregnant and four months and ten days for a widow who is not pregnant. A pregnant divorcee or a widow must wait till the delivery of the child before remarrying.<sup>6</sup>

A divorced woman can only contract into marriage with her previous husband before the expiration of the viduity period.

## **1.8. Concerning recognition abroad of a marriage registered in Tunisia**

The recognition abroad of a marriage registered in Tunisia will depend on the rules of foreign legal system abroad that will receive such acts and any bilateral agreements.

However, if the marriage is contracted abroad, it must be concluded either in the presence of Tunisian diplomatic or consular agents or according to the law of the land where the marriage is being contracted.

---

<sup>6</sup>The maximum duration of pregnancy is one year from the divorce or death of the husband.

Note that marriage certificates issued abroad for marriage contracted in foreign countries are accepted in Tunisia as long as the marriage contract was concluded in accordance with the laws and regulations of that foreign country. Spouses married abroad will have three months to request the transcription of their marriage certificate at the Tunisian consulate under penalty of a fine.

If the marriage is contracted by the Tunisian diplomats and consulate, Tunisian law must apply.

## 2. Spousal rights and obligations

The rights and obligations of spouses are as follows:

1. To treat each other kindly, live in a good relationship together, and avoid causing each other harm.
2. To fulfil their conjugal duties according to customs and practices.
3. Cooperate in the conduct of family affairs, the good upbringing of their children, and the management of those children's affairs including education, travel and financial transactions.
4. The husband as head of the family, must support the wife and children to the extent of his means and according to their status as part of the components of alimony.
5. The wife must contribute to the expenses of the family if she has the means.
6. The husband has no power of administration over his wife's property.
7. The husband and the wife must stay faithful. Adultery is a crime punishable by law for both spouses <sup>7</sup>.

## 3. Spousal disputes

If one of the spouses makes claim of any fact causing them harm by the other spouse without being able to administer the evidence, and the judge cannot determine the responsible spouse, the judge must appoint two arbitrators. After having studied the situation, they must, as far as possible, reconcile the spouses and, in all cases, give an account of their mission to the judge.<sup>8</sup>

---

<sup>7</sup> Article 236 of the Penal Code set a punishment of five years imprisonment and a fine of 500 dinars. The prosecution takes place at the request of the other spouse who controls the entire process (He/ she can terminate the proceedings or the effect of the conviction).

The accomplice (i.e., the third partner in the crime) is punished with the same penalties as the guilty wife or husband.

In practice, judges give less than 5 years of imprisonment.

<sup>8</sup>In practice, this option is rarely used.

In case of a dispute concerning the ownership of the property at the domestic domicile and in the absence of proof, each spouse will be allowed to respectively claim, under oath, and take the property usually belonging to each gender.

## 4. Filiation

Filiation is established by legal marriage, the admission of the father or the testimony of two, or more, honourable persons.

Filiation is not established in case of denial of a child of a married woman whose non-cohabitation with the husband has been proved, or of a child birthed by a married woman one year after the absence or death of her husband or the date of divorce.

The admission is inoperable if there is compelling evidence to the contrary. The recognition by a child of unknown filiation, of paternal or maternal affiliation, is proof of this, provided that the recognised mother or father is likely to engender a child similar to the author of the recognition and confirm the claim of the latter which thus becomes, towards the recognised parents, object of obligations and subject to rights between parents and their children.

If a child is born to a woman six months after the conclusion of a marriage, filiation is still established to the husband who will be the father. The breakdown of the paternal filiation excludes the child from parentage bonds and abolishes his right to maintenance and succession.

If the husband denies being the father of a child conceived or born during the marriage, the contested parentage will be dealt with by a court decision. All of the methods of proof, foreseen in the matter by the law, will be admitted.

In accordance with the provisions set above, if the judge establishes the denial of paternity then he will pronounce the perpetual separation of the spouses and the rupture of the paternity.

## 5. Dissolution of marriage

Marriage can be dissolved by nullity or divorce.

### 5.1. Nullity of a marriage

The union that contains a clause contrary to the essence of marriage or is entered into in contravention of the legal provisions contained in the Code of Personal Status relating to the consent of the spouses, impediments to marriage, and polygamy, is void. The spouses who continue their union despite the pronouncement of its nullity are punishable by six months of imprisonment.

The void marriage is dissolved without need to go through divorce procedures.

However, a consumed void marriage will have the following consequences:

- The right of the woman to claim the dowry fixed by the marriage certificate or by the judge,
- The establishment of filiation,
- The obligation for the woman to observe the iddah period that runs from the separation,
- Permanent impediments as result of the union.

## 5.2. Divorce

Divorce is only pronounced in court. As per articles 31, 32, and 33 of the Tunisian Code of Personal Status, divorce can be declared:

- **In case of mutual consent by both parties**

The judge can shorten the divorce proceedings in cases of mutual consent, provided that this does not harm the interest of the children, if there are any.

- **Upon the request of one of the spouses because of prejudice suffered at the hands of the other spouse**

It is decided on the compensation for the material and moral damage suffered by one of the spouses at the hands of the other.

- **Upon the request of the husband or wife**

It is decided on the compensation for the material and moral damage suffered by one of the spouses at the hands of the other spouse requesting this type of divorce.

### 5.2.1. Material damage of divorce

Regarding the woman:

Monetary damage will be compensated in the form of a monthly allowance to be paid starting when the iddah period comes to an end, in accordance with the standard of living to which she was accustomed to during conjugal life, including the housing. This income can be revised and increased or reduced depending on intervening fluctuations. It continues to be paid until the death of the divorced woman or if there are any changes in her social position through remarriage or when she no longer needs it. This income becomes a debt that enters into the liabilities of the estate upon the death of the divorcee (former husband) and must be consequently amicably settled with the heirs or judicially by a single payment and taking into account the age of the beneficiary at the date. All of this applies unless the divorced woman prefers to receive a single payment in the form of capital. The monthly allowances mentioned above can be replaced by a single global payment to be decided by the judge and to be paid once to the woman.

### 5.2.2. Procedure

Divorce can only be pronounced after the family judge has tried towards reconciliation which has remained unsuccessful.

Where the defendant does not appear, and they have not been served the divorce papers, the family judge shall refer the matter to another hearing and shall be assisted by any person he may deem useful in order to notify the interested party personally or to find their real address in order to do so.

In the cases where one or more than one minor child is involved, three conciliation hearings shall be held with each one taking place within thirty days of the one preceding it. During this period, the judge will strive to achieve conciliation between the two parties. To this end, he may request the services of any person he deems useful.

The family judge must decide on all urgent measures concerning the residence of the spouses, the alimony, the custody of the children and the visitation rights. The parties may expressly agree to waive these measures in whole or in part, provided that such waiver does not harm the interests of minor children.

The family judge will fix the amount of alimony in light of the examination made at the time of the attempt of conciliation.

Urgent matters are subject to an executory order, which is susceptible to neither appeal nor cassation proceedings, but can be revised by the family judge as long as it has not been ruled on the merits of the case.

The court will decide, in the first instance, on the divorce after the reflection period of two months preceding the pleading. It will also come to a decision as to all the factors that encompass the divorce, it will fix the amount of the alimony due to the divorced woman at the expiry of the iddah period as well as urgent measures that are subject to the family judge's orders.

The provisions of the judgment relating to the custody of the children, alimony, annuity, residence of the spouses and visitation rights are enforceable, notwithstanding appeal or cassation.

The judgments pronouncing divorce or noting the nullity of the marriage and having acquired the force of a final judgement, must be transcribed on the civil register of the place where the marriage was transcribed.

Mentions will be made of this judgment in the margin of the marriage and birth certificates of the spouses.

An individual who prevents court summons from reaching their spouse will be liable to one year of imprisonment.

## 5.3. Consequences of divorce

### 5.3.1. Right to custody

The right to custody consists in the general care and provision (i.e., housing, health care, managing his/her bank account, traveling ...), education and school attendance of the child.

The holder of this right must be fit to providing it (i.e., must be an adult, sane, honest, able to meet the needs of the child, free from any contagious disease). Custody can be granted to either one of the parents or to any other person based on the best interest of the child.<sup>9</sup>

A mother who refuses to take care of her child will only be obliged to do so when no other person can be substituted for it.

The expenses necessary for the child custody are taken from his/her property or from those of the father if the child does not have his/her own property.

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

According to article 59 of the Code of Personal Status, the holder of the right of custody of a confession (i.e., religion) other than that of the father of the child can exercise this right only as long as the child is less than five years old and there will be no cause for fear that he/she will be raised in a religion other than that of their father's.

The provisions of this article do not apply where the right of custody is exercised by the mother of the child.

---

<sup>9</sup>Although these articles are not strictly applied by courts, the Code of Personal Status provides these rules that should be known by the spouses:

The male custodian must also have at his disposal a woman who is in charge of custody. He must be in one of the cases of permanent impediments of marriage ("Muharam") vis-à-vis the female child (e.g., related by blood, where he must be the father or grandfather of the female child and not a cousin of the female child as there is a fear of any abuse).

For a female custodian, being married again (e.g., the divorced mother) is a challenging situation.

In fact, the female custodian must be unmarried, unless the judge grants her the custody regardless of her marriage in line with the child's interest. She can keep the custody if her former husband who is the guardian of the child and who can legally take over the custody does not oppose to such situation for a year after being aware of the marriage consummation of his ex-wife. The female custodian can also keep custody of the child if the holder of the right of care abstains from claiming their right for a year after being aware of the marriage consummation. She can also keep custody regardless of her second marriage if she is breastfeeding the child, or if she is both mother and guardian of the child.

### **5.3.2. Children exiting the Tunisian territory in case of divorce:**

When the parents are divorced, and the custody is granted to the mother, the father will still be the guardian.

However, the mother will still enjoy the privileges of guardianship with regard to the child's travels, studies and the management of their accounts.

The minor's trip outside the country is subject to the authorization of one of the parents, the guardian or any person to whom custody has been entrusted.

As a result, the person granted custody can travel outside Tunisia with the child/ children in his/ her custody and the said person no longer needs to show an authorization from the guardian at the borders.

In the event of a dispute over the minor's trip, any person with an interest or the public prosecutor's office may appeal to the president of the competent court of first instance who rules in accordance with the expeditious proceedings provided for in article 206 of the Code of Civil and Commercial Procedure, taking into consideration the best interests of the minor.

However, If the mother who has custody of the child changes residence and moves to a distance that prevents the guardian from performing his duties towards the child, the mother will be deprived of this right.

Also, the father can only take the child out of the mother's place of residence with her consent as long as she retains the right of custody, unless the child's interest requires otherwise.

Finally, the judge may entrust the powers of guardianship to the mother if the guardian who holds custody of the child displays abusive behaviour, neglects to fulfil his obligations, or is absent from his home or becomes homeless, or is detrimental to the best interest of the child. In such a case, the mother can freely travel outside of Tunisia without any threat to her custody rights.

### **5.3.3. Child support**

Child support includes food, clothing, shelter, education and anything that is considered necessary for existence, according to customs.

Support continues to be served to children until they reach the age of majority and until the end of their studies, provided they do not exceed the age of 25 years. The girl continues to be entitled to support as long as she has no resources or is not dependent on the husband. Support continues to be provided to those children who are handicapped and incapable of supporting themselves, regardless of their age.

In the case of the father's inability to provide child support, the mother will have priority before the grandfather to provide support to her child.

Anyone who voluntarily refuses, for one month, to pay the alimony (i.e., child support) or to pay the divorce allowance, is liable to a sanction of imprisonment ranging from three months to one year and to a fine of one hundred dinars (100 dinars) to one thousand dinars (1000 d).

The payment stops the prosecution, the trial or the enforcement of the sentence.

#### **5.3.4. Right to housing**

The father must provide housing for the child and the custodian if the latter does not have housing. A right to stay is established for the benefit of the custodian when the father, the owner of the house, is compelled to lodge the custodian with the child. This right disappears by the extinction of this cause. In the case where the father is obliged to lodge the custodian with the child in a rented lodging by him, he is obliged to continue to pay the rent until the extinction of the cause of his obligation.

If he is obliged to pay a housing pension for the benefit of the custodian and the child, the amount of the pension shall be determined based on the father's financial capacity and the needs of the child and the cost of living. The right to remain in the house does not preclude the right of the father to transfer it, whether or not in return for payment, or to mortgage it, provided that this right to stay is clearly mentioned in the title establishing the assignment or the mortgage.

It is possible to revise the judgment on the accommodation of the custodial circumstances or situations requiring it. The Tribunal shall rule on the requests for review in accordance with the procedures prescribed for expeditious proceedings and must decide on the grounds for review taking into consideration the interest of the child. Urgent measures relating to the custodian child's right to housing and the, taken by the family judge, remain subject to review in accordance with prescribed procedures in this respect.

Anyone who intentionally transfers or mortgages the house dedicated to the accommodation of the custodian and child without mentioning their rights in the title of assignment or mortgage with the intention to deprive them of their rights will be punished by imprisonment of three months to one year and a fine of one hundred to one thousand dinars.

A father who deprives the custodian and child from occupying the house granted by the tribunal will face the same sanctions mentioned in the previous paragraph. The deprivation of the house can be done by knowingly terminating the rental agreement or by, either refusing to pay the rent due, or by voluntarily being in default regarding the payment of the housing pension.

## **6. Legal representation and guardianship**

When the child's parents are married, the father is automatically the guardian.

When the parents are divorced, and the custody is granted to the mother, the father

will still be the guardian, although the mother can obtain both privileges in some cases (i.e., when the father has died, when the judge grants the mother both guardianship and custody, please refer to point 5.3.2 above).

When the child reaches 18 years of age and no judgment of prohibition has been pronounced against him/her, he/she will be considered an adult, with some exceptions that will be detailed below.

Any person fully or partially incapable due to their age, dementia, imbecility or lavishness must be legally represented by a legal guardian. If not, their act will be challenged.

The judge is the guardian of a person who has no guardian.

## **6.1. Prohibition and emancipation**

Prohibition in this context refers to the restriction of persons who are deemed incapable to carry out decisions and/or perform acts.

The prohibition pronounced by judgment will be lifted only by judgment. The prohibited party, for whatever reason, has the right to apply directly to the courts for the release of the prohibition.

### **6.1.1. Minors**

A minor is anyone that has not reached the age of eighteen.

A minor becomes an adult by marriage if he/she exceeds the age of seventeen regarding their personal status and management of their commercial and civil affairs.

The father is the guardian of the minor child, and in the event of the death or incapacity of the father, the mother is the legal guardian. If the father has left a will (i.e., testimony appointing a guardian who is not the mother after his death), this will only take effect after the mother's death or disability.

In the event of death of the parents or their incapacity, and in the absence of a testamentary guardian, the judge must appoint a guardian.

Guardianship can be ceased on the judge's orders for legitimate reasons.

Acts by any person who has not reached age of discernment (adulthood) due to their young age are nil.

The child who has not reached the age of thirteen is considered to be lacking judgement and all his/her acts are void.

A child who is over the age of thirteen is considered to have judgement. His/her acts are valid in case they are advantageous and nil if they cause him/her harm. Their validity will be, in both cases, subject to the agreement of the guardian.

A judge may give a child restricted or absolute emancipation. This means that it

is for the judge to decide whether a child will have full freedom and control of their lives or if restrictions will be set to control this freedom. Any acts carried out by the child, within limits set by the judge, will be seen as legitimate. A child cannot be emancipated before the age of fifteen.

### **6.1.2. Dementia and weakness of mind**

The insane person is the one who has lost reason, his dementia can be continuous or cut off during some intervals.

The weak-minded is one who does not enjoy the fullness of his conscience, who is not able to run his business, does not understand current common transactions and is wronged in his acts of purchase and sale.

The prohibition will be pronounced by the judge on the advice of experts on the matter.

Acts performed by the prohibited individual without the assistance of his guardian will be void unless approved by a said guardian.

The acts of the insane are void. Acts performed before the judicial prohibition of the weak-minded are voidable if the cause of the prohibition was known at the time these acts were made.

### **6.1.3. Lavishness**

Lavish is one who does not properly manage his good and indulges in extravagances regarding his spending. Its prohibition is subject to a judgment.

All acts performed by a lavish person before the prohibition judgment are valid and not subject to annulment. The validity of the acts performed after the judgment will be subordinated to the guardian's approval.

### **6.1.4. Legal Care (KAFALA and Adoption)**

#### **a- Kafala**

"Kafala" or "Informal guardianship" is the act by which a charity or an adult takes care of a minor child.

Informal guardianship must be concluded by a notarial deed. The parties to this deed are the informal guardian and the child's father and/ or mother, and, if necessary, the public guardian or his representative. The unofficial guardianship act is approved by the judge.

The guardian is civilly responsible for the acts of the child, under the same conditions as fathers and mothers. The child preserves all the original rights resulting from his affiliation and in particular his first family name and his succession rights.

Informal guardianship ends when the child reaches the age of maturity.

The Court of First Instance may decide, at the request of the unofficial guardian,

the parents of the child or the public prosecutor's office, the termination of the guardianship agreement, taking into consideration the interest of the minor.

### **b- Adoption**

The adopter must be an adult of either sex, married <sup>10</sup>, enjoying full civilian capacity. He must be of good character, healthy in body and mind and able to meet the needs of the adoptee. The judge may, where the interest of the child so requires, dispense the widower or divorced adopter of the marriage condition. In this case, he may gather all information necessary to assess the causes and conditions of the adoption, taking into account the interest of the child.

The age difference between the adopter and the adoptee must be at least 15 years, except in cases where the adoptee is the child of the adopter's spouse. A Tunisian can adopt a foreigner.

The consent of the spouse is necessary.

Adoption must be of a minor child of one sex or the other.

The act of adoption is established by an unchallenged court judgment. The margin of the birth certificate of the adoptee will contain a transcription regarding the adoption.

The adoptee takes the last name of the adopter. He may change his first name, mention will be made in the adoption judgment at the request of the adopter.

The adoptee has the same rights and the same obligations as the legitimate child. The adopter has, with respect to the adoptee, the same rights as the law confers on the legitimate parents and the same obligations it imposes on them.

Although this is the case, if the natural relatives (i.e., parents, siblings, aunts...) of the adoptee are known, the impediments to marriage remain.

The Court of First Instance may, at the request of the Public Prosecutor, withdraw the custody of the adoptee from the adopter who has seriously failed his obligations and entrust it to another person, taking into account the interest of the child.

## **7. Inheritance**

Inheritance takes place upon the natural death or the judicial declaration of death (by disappearance<sup>11</sup>) and existence of the heir.

If two people die without it being possible to determine which of them died first, there is no opening to inheritance between them, whether or not they died in the same event.

Voluntary homicide is an impediment to inheritance. The offender is excluded from

---

<sup>10</sup> Note that according to recent unpublished case law, the tribunal of first instance of Tunis granted adoption to a woman who is not married.

the right to inherit, whether he is a principal perpetrator, an accomplice or a false witness whose testimony has led to the death sentence of the deceased followed by execution.

There are two types of heirs:

- 1) Reserved heirs ("Farth")
- 2) Universal heirs ("Aceb")

Reserved heirs are the ones who have a fixed share of inheritance determined by the Code of Personal Status in their favour.<sup>12</sup> The inheritance is referred in the first place to the reserve heirs.

The universal heirs are three types:

- 1) Universal heirs by themselves
- 2) Universal heirs as a result of the presence of other heirs
- 3) Universal heirs with others

Eviction in inheritance «Hajb» consists in totally or partially ousting an heir from the inheritance. It is of two types:

- 1) reduction of the share of inheritance to a lower one
- 2) total eviction of the inheritance

The share of a missing person in an estate is reserved for him. He will take it if he turns out to be alive. If a judgment declaring the disappearance is pronounced, this part will return to the heirs inheriting at the date of the deceased's death. If, after the declaratory judgment of disappearance, the deceased is alive, he will receive only what remains of his inheritance share in the hands of the heirs.

The adulterous child will inherit only from his mother and her parents. The mother

---

<sup>11</sup> Rules of disappearance are regulated by articles 81 to 84 of the Code of Personal Status.

In case of disappearance while there is a war or in exceptional circumstances, the judge is required to give a time frame of two years to look for the disappeared person. After this period, a judicial decision is pronounced regarding the disappearance and as a result, the judicial death of the person.

In other circumstances (not a war and no exceptional circumstances), the judge can decide on the length of the period to make sure the person is alive or has died.

Articles 54 to 58 from the law n° 1957-3 dated on August 1<sup>st</sup>, 1957 related to civil status regulates the circumstances and consequences of disappearance as well.

<sup>12</sup> Note that females and males do not have equal shares based on the law. However, please consider that a project of law has been proposed to amend these rules. The project of law is still under examination and not yet entered into force.

and her parents will have, alone, hereditary vocation in the succession of the said child.

### **Liquidation of inheritance**

The charges against the estate will be paid in order of priority as follows:

- 1) the expenses related to the real property;
- 2) funeral and burial expenses;
- 3) the ascertained debts borne by the deceased;
- 4) valid and enforceable legacies;
- 5) inheritance rights.

In case of absence of inheritance, the latter or what remains of it is collected by the treasurer.

When there is an unborn child among the heirs of the deceased, a part of the inheritance will be kept for the unborn child till his/her birth. (e.g. the deceased is a husband and he left a pregnant wife. The unborn child, if born alive, will have right to inherit from his father. Thus, a part from the inheritance shall be kept frozen to give it to the child once born).

## **8. Wills**

A will (or the testament) is a deed (notarial or privately signed and dated) by which a person transfers an asset free of charge during the time when such person no longer exists.

The legacy in favour of a place dedicated to worship or of a legally constituted association is permitted. The will is valid even if the testator and beneficiary are not of the same faith.

A will made in favour of a foreigner is valid subject to reciprocity.

The will can be revoked by the testator.

### **8.1. Testator and beneficiary**

The testament (or the will) made by a lavish, a weak-minded person or a minor of sixteen years is valid, on the condition of its approval by the judge.

A will cannot be disposed of in favour of an heir, unless approved by other heirs. A will cannot cover more than one third of the estate that may be disposed of. The legacy which exceeds one-third of the estate of the deceased, is enforced only if the heirs approve it.

The fact that a person assigns, during his lifetime, to all his heirs, to one or more of

them, specified property of his patrimony not exceeding their inheritance, is valid and is executed at his death. The surplus is subject to the rules of the will.

The property subject of the will is collected by the beneficiary upon the death of the testator.

The will in favour of two or more persons is limited to one-third of the estate's assets.

If a child is born alive at the time the will is made and within the time provided in Article 35 of the Tunisian Personal Status Code, then the will is valid.

Tunisian law recognises "compulsory" wills which are enforced before regular wills. Compulsory wills are provided by the law and are in favour of children whose parents have passed away before their grandparents and prioritises the children's rights as beneficiaries.

## **8.2. Assets likely to be willed**

The testator can bequeath any existing assets owned at the time of the will if the asset is determined. The testator can grant a fixed amount loan in his will, but it cannot exceed the one third limit unless approved by the heirs.

## **8.3. Effects of a will**

The will may be rejected by the beneficiary or his representative.

The rejection of the will must take place after the death of the testator and, at the latest, two months after the denunciation of the will to the beneficiary. The beneficiary's silence during this period is worth acceptance.

The will is void if the death of the individual writing the will was related to insanity, or if the beneficiary passes away before the testator or by destruction of the asset, or by rejection of the will by the beneficiary.

# **9. Donation**

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

The donor can request that the donee complete a condition that makes the donation final.

The gift is perfected by the deliverance of the given thing to the donee. The gift is void if the donor or donee passes away before delivery, even if the donee has put all his efforts to take possession of the given thing.

The donation made by a patient during his last illness is considered a legacy.

A notarial deed is mandatory to conclude a donation.

If the donor reserves the right to revoke his donation, the donation remains valid, but the reserve is void.

Provided that the rights specially acquired by third parties are respected and unless there is one of the impediments provided for in Article 212, the donor may request the revocation of the donation only in some cases.

## 10. Exequatur

As a general rule, judgements and decisions issued by foreign courts cannot be executed in the Tunisian territory unless they are declared executory (i.e. enforceable) by the Tunisian courts that check if they comply with certain requirements.

Exequatur is not granted to foreign judicial decisions if:

- The subject of the dispute falls within the exclusive jurisdiction of the Tunisian courts.
- The Tunisian courts have already rendered a decision that cannot be appealed by ordinary means on the same subject, between the same parties and for the same cause.
- The foreign decision is contrary to public order within the meaning of Tunisian private international law or has been issued following a procedure that did not preserve the rights of the defence.
- The foreign judgment has been annulled, or its enforcement suspended in accordance with the law of the country where it was pronounced or is not yet enforceable in the country where it was rendered.
- The State where the judgment or decision was made did not respect the rule of reciprocity.

Note that the acts of civil status established abroad as well as the final judgments of civil status are registered without requiring the procedure of exequatur, in the registers of births, marriages, and deaths of the interested party, except for the judgments relating to the personal status, and providing that the other party concerned by such acts is informed of that.

In practice, there are different interpretations especially regarding the divorce matter (judgments pronouncing divorce) due to the existence of article 42 in the law regarding the civil status stipulating that: "If the divorce is pronounced abroad, the transcription is done at the diligence of the interested parties, on the registers of the civil status of the place where the marriage has been transcribed."

Some public officials will accept the transcription of divorce on the registry of civil status without going through the exequatur procedures provided that the interested party will provide a final judgment of divorce, while other will require following the exequatur in order for judges to control the content of such judgement and

make sure it is not contrary to public order within the meaning of Tunisian private international law.

## 11. Glossary

Disappeared person	A person who is missing and cannot be found alive.
Domestic domicile	The home used by a married couple to live in.
Donee	The beneficiary of the donation.
Emancipation	The ability of a person to carry out decisions and be liable for actions once a certain legal age has been reached.
Exequatur	The procedure to follow to make a foreign judicial decision or judgment enforceable in Tunisia.
Lavishness	The inability of a person to properly manage his/her goods, leading him/her to be indulged in extravagances regarding his/her spending.
Prohibition	The restriction of persons who are deemed incapable to carry out decisions and/or perform acts.
Testator	The person who transfers an asset free of charge during the time when he/she no longer exists.
Tribunal	A court of the judicial branch.

<https://www.britishembassy.gov.uk/tunisia>