

Swiss Institute of  
Comparative Law

# Mixed Marriages: Selected Legal Issues Relevant to Swiss-Islamic Families



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# Introduction

In a mixed marriage, religion and Islamic law can become important points of discussion. While the law in an Islamic state can differ greatly from Swiss law (and from other European legal systems), it is important to recognize that there is not one single Islamic law or one Islamic codification but rather a multitude of different versions and opinions. Also important, every "Islamic" state has its own national legislation that may differ from classical Islamic law.

This booklet only explains the law of some Arab states and Iran. Although Iran is an Islamic state but not an "Arab" state, where the text refers to "modern Arab states" or "Islamic states", Iran is included unless specifically noted otherwise. The booklet cannot and does not exhaustively cover all of the questions that may arise or every legal rule. Instead, it outlines the pertinent rules in classical Islamic law (which still serves as a source of inspiration for today's law) and the same rules in the national law of the state in focus.





# 1. Classical Islamic Law

Classical Islamic Law has several **sources**. Primary sources are the **Quran** and the Sunna. The Quran treats various subjects in its 114 “*suras*” and 6236 verses. These suras and verses include legal and moral norms. The **Sunna** [*hadith*] describes what the Prophet Mohammed said and did during his life, as written down after his death. These “traditions” are considered the second-most authoritative source of Islamic law after the Quran.

Secondary sources of Islamic law are based on scholarly thought rather than on texts. Of the secondary sources, the most important ones are the consensus of all Islamic legal scholars [*ijma*'] and the process of deductive analogy [*qiyas*].

The term “**sharia**” refers to the divine law that cannot be altered. The content of “sharia”, however, is considered differently by different Muslims. At its most basic, sharia covers all the religious, moral, and legal values and norms to which a Muslim should conform his or her conduct. Human interpretation of the sharia is called *fiqh* (meaning “comprehension”).

Different Islamic **legal schools** have their own interpretations of the law and thus of the applicable rules. The two main schools are the Sunni (85% of all Muslims) and the Shia. Today, there are four main Sunnite schools, *Hanafi*, *Maliki*, *Shafi'i* and

*Hanbali*, named after their respective founders. Among the Shia schools, the *Ja'fari*, *Imamiyyah*, or “Twelver”, school is the most important one. No school or authority has a monopoly on the interpretation of Islamic law – therefore interpretations and views on the rules can differ vastly and may even be contradictory.

## Family and Succession Law

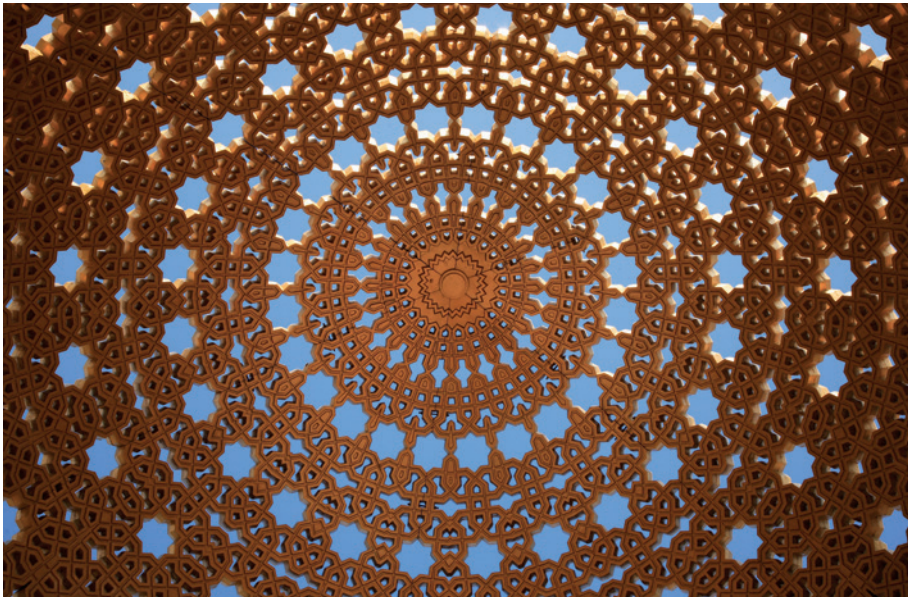
Islamic family law is sometimes called the core element of sharia and it is often seen as a part of Muslim identity. This is because family law (together with succession law) is one of the subjects treated most comprehensively in the Quran and Sunna. These are primary sources for the law concerning marriage, divorce, maintenance, and custody. Note that Islamic family law, while often criticized today, is a vast improvement on pre-Islamic rules – especially in its treatment of women.

Modern Arab states (with the exception of Saudi Arabia) have adopted their own family law **codifications** based on the principles of classical Islamic family law as interpreted by the school of law predominant in the country. The codes may consist of singular legal texts or a comprehensive codification. For matters not specifically addressed, the law often refers to the classical law.



It must be emphasized that a Swiss judge could never apply "Islamic law" as such, but only a codified state law. More-

over, the judge can only apply it if Swiss law has declared this foreign law to be applicable.



Marriage as a union between a man and a woman is an institution that exists in all Islamic states. Whereas Sunni accept only marriages that have no fixed term, Shiite belief permits a temporary marriage between spouses.

The following overview concentrates on the Sunnite view of marriage.

### Who can marry?

Modern Arab states continue the classical Islamic law position that views marriage as the union between a man and a woman. There is no homosexual marriage in any Arab state.

In classical Islamic law, there is no consensus regarding a **minimum age** for either spouse. Nevertheless, in many modern Arab states, there are efforts to combat underage marriage. These states have introduced a minimum age as a requirement for a registered marriage and have made underage marriage a criminal offence. Fines are imposed on violators and barriers have been erected to the enforcement of

rights associated with the union. Nevertheless, because unofficial, or customary, marriages are valid as a religious matter, the state may recognize the marriage of a minor once it occurs if it is otherwise legal.

While a marriage between individuals of **different nationalities** may require additional administrative steps in modern Arab states, it is permitted.

**Inter-religious marriage**, however, is not always permissible in classical Islamic law. Traditionally, a Muslim man could marry a Muslim, Jewish, or Christian woman. A Muslim woman could only marry a Muslim man. Modern Arab states, with the exception of Tunisia, follow this rule.

Similar to Switzerland, family members of a certain **degree of relationship** may not marry each other. Islamic law lists those whom one may not marry, including: a parent; an offspring; a sibling or half-sibling; an uncle or aunt; a niece or nephew; and a person who was breastfed by the same woman. First cousins, it should be noted, may marry.

A **temporary marriage** [*mut'a*] contract is concluded between a (married or unmarried) man and an unmarried woman, for any fixed period of time and with the mandatory agreement of a dower. Mostly aimed at pleasure, temporary marriage does not create a mutual right of inheritance for the spouses and most marriage rules do not apply. Any child born during the marriage, however, will be legitimate. As a result, the wife also has to respect the waiting period [*idda*] after the marriage ends (generally due to expiration). This form of marriage is recognized only in Iran and for the Shiite population in Lebanon.

### Marriage contract

The concept of a «marriage contract» in Islamic law is not comparable with that in Western legal systems. An Islamic marriage contract, on the one hand, fulfils the functions of a **marriage certificate**: the marriage is concluded with conclusion of the contract. On the other hand, as conditions and clauses can be included in the document (at the least, the dower agreement is generally included), it also fulfils the functions of a Swiss **marriage contract**. As the separation of property is the traditional and legal matrimonial property regime in Islamic jurisdictions, the main reason to conclude a marriage contract in Western

systems does not hold for the Islamic marriage contract.

The Islamic marriage contract can be concluded orally or in written form. It will always contain a dower agreement, even though such an agreement is not a condition on which the validity of the marriage rests: if no explicit agreement is made, the “customary” dower [*mahr almithl*] applies.

The contract may also include other conditions of the marriage at the parties' discretion as long as they do not violate Islamic law. For example, clauses may restrict the husband's right to engage in polygamy, may certify that the wife's

The **dower** is (theoretically at least) an obligatory “gift” to the bride and her personal property: it will be paid to her and not to any other third person. Generally, the amount of the dower *will* be discussed between the families before the marriage and will depend inter alia on the social standing of the bride. While it is mostly financial, it may also be goods, a service, the funding of a pilgrimage, etc. The dower can be something with a symbolic value (e.g., a Quran and a mirror) or consist of a significant amount of money or gold coins. In practice, the dower will be paid in two tranches: one part will be immediately due when the contract is concluded and the second part will be due at time of divorce or death of the husband. Of the various functions a dower may fulfil, its main role is offering the woman a certain financial security in case of divorce (since Islamic post-marital maintenance rights are limited and properties remain separate). Women can use their dower to build their own fortune, as traditionally they do not have to contribute to the costs of maintaining the family. Further, because the second part of the dower becomes due with divorce, it may slow a husband from unilaterally divorcing his wife. At the death of the husband, any unpaid dower will be due to the wife from the assets of the estate.



children from a previous marriage can live with the couple, or may determine that the couple will live in a particular country or town. Moreover, conditions can equalize the rights of the wife and husband in the marriage through provisions such as ones that secure the wife's right to unilaterally divorce the husband, the right to continue her education or employment, or the right to travel without her husband's permission. A violation of the conditions set forth in the marriage contract may be grounds for divorce.

From a practical point of view, the use of conditions is rare and in certain communities may even be seen as shameful. Moreover, a judge could refuse to uphold a (tech-

nically legal) condition on grounds of it being against public policy.

### Marriage: formal requirements

In classical Islamic law, there is only one requirement as to the form the marriage ceremony must take: **two witnesses** must be present. The marriage does not need to be performed by either a state official or a religious authority (*Imam*). Neither is there any restriction on where or when the marriage is concluded. The possibility of a marriage by proxy means that there is not even a requirement that the bride and groom be present. Therefore, proof of marriage is relatively easy.



In modern Arab states, administrative requirements insert state authority into the ceremony. It is now common that a state official or judge perform the marriage and that a state-issued license be signed by the couple and certified.

### Registration

Under classical Islamic law, there is no need for a written marriage contract or registration of a marriage. Modern Arab states have instituted registration requirements to better protect the spouses by providing conclusive evidence of their relationship.

In certain countries, registration may occur in conjunction with a marriage ceremony presided over by a state official. There may be different registration requirements that exist for two nationals of the same religion who marry than for marriages between individuals of different religions and/or nationalities.

### Marital property

There is no concept of marital property in classical Islamic law. Each spouse keeps the property (s)he brings into the marriage. While the husband has an obligation to provide for the wife's subsistence needs (shelter, food, clothing), his property remains his and hers remains hers. Moreover, any dower given by the husband to the wife becomes her personal property and, consequently, will not have to be returned in case of dissolution of the marriage (unless the woman requests dissolution without grounds).

A recent trend in modern Arab states is to provide a legal basis for couples to choose a communal property regime (Tunisia and Morocco, for instance offer this option).

### Marital Obligations

Under classical Islamic law, the obligations of the husband differ from the obligations of the wife. The main **obligations of the husband** are to pay the dower and to maintain his wife.

The **dower** [*mahr, sadaq*] is payment (generally cash or goods) from the man to the woman as a part of the marriage. Although it is not a condition of marriage and although a woman can agree to forego the dower, it is considered to be an obligatory gift to the woman and therefore will be her property.

The **maintenance** obligation [*nafaqa*] includes providing for the wife's clothing, shelter, food, and medical expenses. This, significantly, adheres to the husband independent of his wealth and even if his wife is wealthier than he. Legally, the maintenance is considered a debt – thus, non-payment can be a ground for divorce and/or prison (the latter only if the payment was financially possible but withheld).

The **wife's obligations** to the husband are **non-financial**. In traditional Islamic law, the wife has a duty of obedience to her husband. This means that a husband may determine his wife's movement, employment, social relations, and other activities. She also has the obligation to care for the

home and the children (including a duty to breastfeed).

In modern Islamic law jurisdictions, these duties have been relaxed and/or equalized. The husband is now expected to consult with his wife on matters affecting her and the family. In a number of countries, laws are being passed that provide for the empowerment of women within the family and strengthen the legal position of the wife in relation to her husband.

A growing area of attention is that of the rights and obligations of wives regarding sexual relations. Many Islamic law jurisdictions now recognize common rights and duties in such matters. Marital rape, therefore, may be grounds for divorce. It is not, however, expressly criminalized.

### **Polygamy**

Classical Islamic law allows polygamy. A man can have up to four wives if he is able to treat them all equally. Some scholars deem this to be impossible and therefore a barrier to any second/multiple marriage.

In most modern Islamic countries, polygamy is still allowed. It is, however, rare and it can also be a legal or contractual ground for divorce. Some states, like Tunisia, have forbidden polygamy.

### **Recognition of Islamic marriage in Switzerland**

The recognition of a foreign marriage by Swiss authorities will depend on whether the marriage has been validly concluded in that foreign state. While a religious marriage concluded in Switzerland has no legal effects on its own, Swiss courts may recognize such a marriage concluded in a country where it was legal.

An exception to the general rule of recognition is the Swiss prohibition on recognizing bigamy or polygamy. Even if such a marriage is validly concluded abroad, Swiss law deems it contrary to Swiss public policy and will refuse to recognize it in Switzerland. The non-recognition of a polygamist marriage does not prevent a judge from enforcing obligations related to the consequences of such a marriage, for example when examining questions of succession or the legitimacy of children of such a union.

## 3. Dissolution of Marriage



## Procedures

Classical Islamic law has few formalities for a dissolution of marriage: the procedure can take place without interference by the state and can largely be determined by the spouses themselves.

Marriages can be dissolved by **nullity** if, for example, they are concluded in contravention to legal provisions on impediments to marriage (like blood-relation). If such a marriage has been consummated, it may nevertheless engender obligations regarding filiation and payment of dower.

Repudiation, or the **divorce on initiative of the husband** (“private”, “unilateral”, or “oral”), is effectuated by speaking words that indicate the will to dissolve the marriage partnership. These words, for example, “*anti taleq*” (“You are divorced”) need not be spoken to the wife directly, but according to some interpretations of the law (Shiite law), it would require witnesses. Once the words have been spoken, a waiting period of three months begins during which the couple can reconcile. If no reconciliation occurs within that time, the dissolution will be irrevocable and the original marriage contract will terminate.

The husband’s right to unilateral divorce [*talaq*] can also (generally or for certain situations) be delegated to the wife. The delegation may take place at the time of the marriage or later.

**Divorce on the initiative of the wife** [*khul*] is possible through the mutual consent of the spouses (or, according to some interpretations, a judicial decree if the hus-

band refuses to consent) and by returning (a part of) the dower or giving another compensation to the husband.

There is **judicial divorce** in classical Islamic law as well. This is to the advantage of the woman, as she can initiate such proceedings unilaterally.

In some modern Arab states, extra-judicial, or “private”, divorce is restricted or prohibited. In those jurisdictions, dissolution can only be declared by a court.

## Grounds

The grounds for which a (private or judicial) dissolution can be brought define important aspects of the classical Islamic law approach to divorce. The divorce without ground and divorce for cause vary between men and women as well as in the effects on property.

Men can express the will to divorce without needing to show cause. Private, unilateral, no-cause divorce is therefore unlimited for men.

Women do not have the option of a private unilateral declaration of divorce if the marriage contract does not provide for it. There must be either a mutual will to divorce or a judicial decision permitting the divorce. Judges may recognize certain grounds as justifiable for a dissolution of marriage: unjustified prolonged absence of the husband; imprisonment; severe disability; failure to financially support the wife; and harm (physical, mental, or emotional abuse, possibly including marital rape).

Modern Arab states have extended more equality to women in matters of divorce. Most importantly, in some states a judge may declare a no-cause divorce over the objections of the husband.

## Property division

While the division of property upon divorce can be contentious for the parties, the basic legal rule is clear: **there is no such thing as “marital property”**. Thus, each person retains the property which is his/hers. The property which the husband brings into the marriage will be taken by him if the marriage is dissolved and the property the wife brings into the marriage will be taken by her if the marriage is dissolved. The dower is considered property of the wife, and she will retain ownership of this at dissolution of the marriage unless she requests a no-cause divorce [*khul*].

For property purchased during the marriage, the ownership is considered to be the partner’s whose money was used to purchase that item or to whom it was gifted. Custom, another source of traditional Islamic legal rules, may determine the ownership of specific items when this is disputed.

Contemporary laws of some Arab states may offer couples the option of agreeing to a regime of shared marital property.

## Recognition of Islamic unilateral dissolution of marriage in Switzerland

Repudiation in classical Islamic law or in some modern Arab states is a marital prerogative without procedural conditions. It is based on a simple declaration of will of the husband to end the marriage, without taking into account the wishes or the consent of the wife. Even if a state authority was to be involved, classical repudiation manifestly violates Swiss public policy and cannot be recognized by Swiss courts.

On the other hand, Swiss public policy will not be violated if the wife gives her consent to – or wants – the repudiation and its recognition in Switzerland. Furthermore, a repudiation abroad between two foreign Muslim spouses can be recognized in Switzerland for lack of a close link between the couple and Switzerland and if a foreign authority has, at least in some way, been involved.



## 4. Children

### Citizenship

Citizenship rules in modern Islamic states vary somewhat from one jurisdiction to the next. The basic rule is the principle of *ius sanguinis*, or passing of citizenship through the parent(s). However, a number of jurisdictions refuse to allow citizenship to pass through the mother, considering the child a citizen of the state of which the father is a citizen. As citizenship rules are determined by the countries from which citizenship is claimed, a child born to a Swiss mother and a father from an Arab jurisdiction will carry both Swiss and the father's nationality. Dual citizenship is widely accepted in modern Arab states.

### Establishment of Paternity

As sexual intercourse is not permitted outside of wedlock, traditional Islamic law bases paternity on the marital union. The **male spouse is the presumed father** of any children born after six months of the marriage, and therefore any such child born after these six months is considered legitimate. Legitimacy also generally adheres to a child born within approximately one year after the dissolution of the marriage.

A child born outside of wedlock will have no legal ties to his biological father, although it will retain all linkages (including inheritance rights) to the mother. The severity of this rule, however, is reduced by the informality of the marriage procedures. With no requirement of marriage registration, the biological parents of a child born out of wedlock can claim the legitimacy of

their child by asserting that there had been a marriage prior to the birth. Importantly, while acknowledgement of paternity does exist [*iqrar*], it presupposes a valid marriage. As a result, the acknowledgement functions both as evidence of a marriage having taken place between the mother and the claimant and as a claim of paternity. Courts have historically taken a pro-recognition standpoint, finding paternity where possible, even in cases with a lack of substantial evidence of a marriage. There are also numerous exceptions to the harsh basic principle.

### Adoption

Traditional Islamic law prohibits adoption. There are, however, institutions that allow for a modified version of adoption. One such is "*kafala*", in which the father can accept responsibilities toward the child without the child taking his name or becoming a potential heir. Through "*iqrar*", a man can acknowledge a child to be legitimate and thus achieve the same result as with an adoption. In some countries, customary alternatives for adoption exist.

Most modern Islamic law jurisdictions maintain the strict rule against adoption as a general principle. However, in some jurisdictions, interpretations of the rule modify its effects. In Tunisia, an adoption is possible.

### Custody

Traditional Islamic law differentiates between guardianship [*wilaya*] and custody

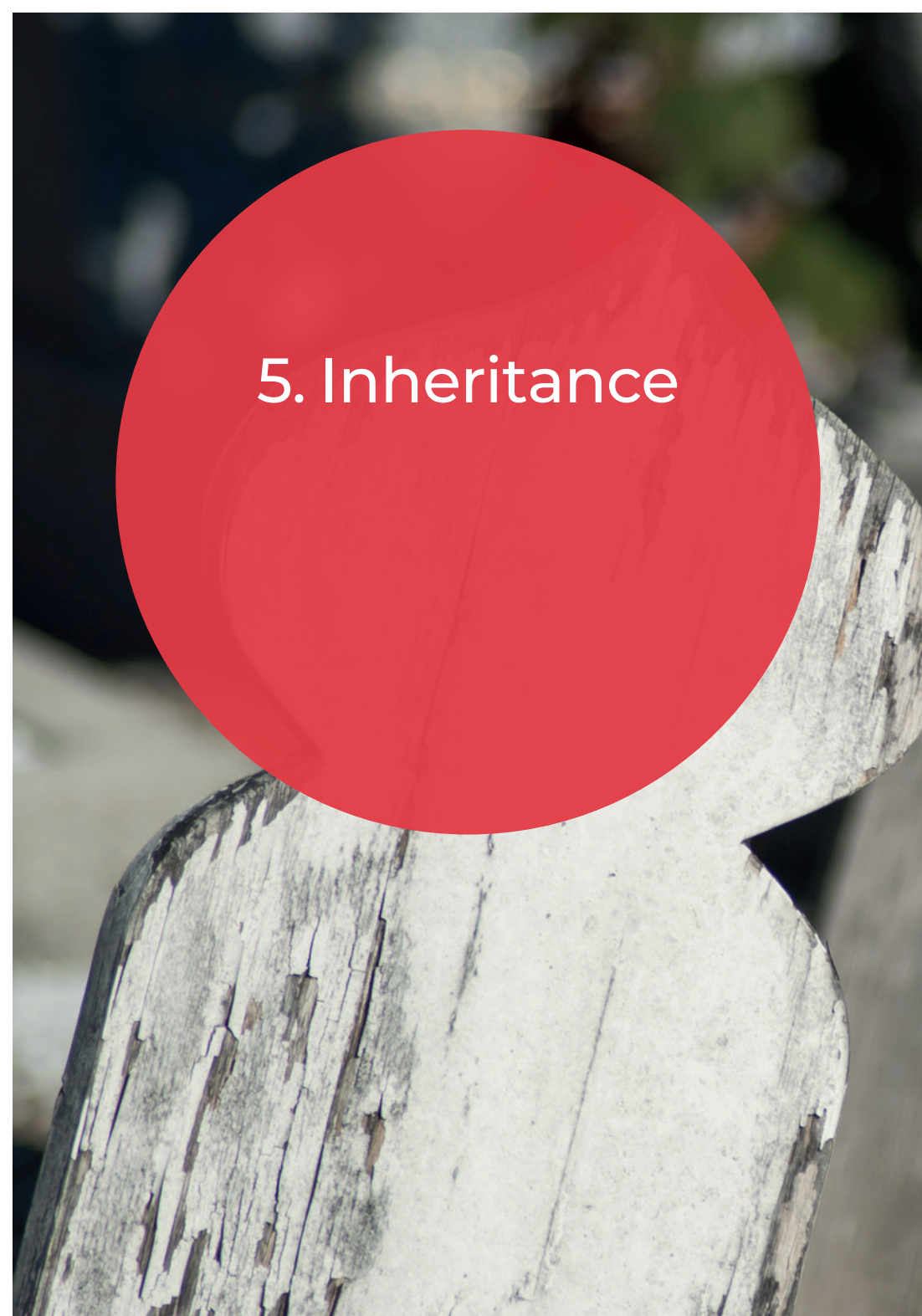


[*hadana*]. Where guardianship implicates financial and legal authority, custody assigns caregiving. The general rule in traditional Islamic law grants **guardianship to the father and custody of the children to the mother**. Therefore, the father remains obliged to financially support the child throughout its childhood while the child usually lives with the mother. The mother, however, will generally lose her right to custody if she remarries. She also loses the rights of custody when the child reaches a certain age. The views on the age at which a child no longer requires custody varies among legal schools (ranging from 2 years to majority for boys and 7 years to majority or marriage for girls). The religion of the

child may also determine the custodial rights, particularly if the mother is not of the same religion as the father.

Modern Islamic jurisdictions are less strict about the division of guardianship and custody, giving more weight to the “best interest of the child” standard. There is a general trend to raise the age at which custody ends and to shift some of the guardian's decision-making rights to the custodian. Many of the details of custody differ among the different jurisdictions, however. All jurisdictions now recognize visitation rights for the non-custodial parent as a principle, but the regulation of such rights (along with those of the grandparents) varies among jurisdictions.

## 5. Inheritance



In today's Islamic law jurisdictions, inheritance law is an area of law that maintains a close resemblance to traditional Islamic law. Numerous detailed rules make the precise division of assets difficult to set forth as a general matter. Legal inheritance includes **only assets** – not debts – and is generally compulsory (the testator cannot disinherit his legal heirs and the legal heirs cannot reject the inheritance). A legacy may be accepted or rejected.

### Testaments/Wills

Classical Islamic law on inheritance is liberal regarding testation, although certain restrictions apply. The most important restriction is the limit placed on the amount of the estate that can be disposed of by the testator: one-third. Two-thirds of the deceased's property must be left to the legal heirs. The validity of dispositions of more than one-third are subject to the heirs' approval after the death of the testator.

An individual may bequest his or her estate through a testament to almost any natural person (irrespective of religion), group of natural persons, juridical person, or other organization. The main exception to this rule is that a bequest cannot be made to a legal heir. That is, any individual who receives an inheritance by means of the law may not be named as a recipient in the testament.

### Formalities

In principle, classical Islamic law imposes no formal requirements on the making of a

testament beyond the **capacity** of the testator. In modern Arab states, other requirements might apply.

### Legal heirs

Legal heirs are family members (including the spouse) of the deceased.

There is an exception to this general rule under traditional Islamic law if there are family members of a different religion. In such a case, a non-Muslim may not be the heir of a Muslim and a Muslim may not be an heir of a non-Muslim. A testament may, however, provide for the non-Muslim spouse to receive part of the estate.

### Fixed/Minimum share

Traditional Islamic law promises female family members, parents, and spouses a **set fraction** (based on a separate set of rules) of a deceased individual's estate. **Male heirs will generally receive twice as much as female heirs.** The wife, for example, receives  $\frac{1}{4}$  of the estate if there are no offspring,  $\frac{1}{8}$  if there are; and she may receive  $\frac{1}{3}$  if she is a non-Muslim and her husband leaves her one third of the estate in a testament. The husband receives  $\frac{1}{2}$  of the estate if there are no offspring,  $\frac{1}{4}$  if there are. The remaining portion, independent of the size, will go to the males of the paternal family. This includes the sons and grandsons, if any, of the deceased. In theory, even distant relatives of the deceased may inherit.

If the only offspring is a daughter, she will receive  $\frac{1}{2}$  of the estate. If there are multiple daughters, they will share  $\frac{2}{3}$  of the estate.

However, where the deceased has both a son and a daughter, the son will receive a share that is double that of his sister. If the only heirs of a deceased were two sons and a daughter, this would result in the sons each receiving  $\frac{2}{5}$  of the legal inheritance, and the daughter receiving the remaining  $\frac{1}{5}$ .

While some exceptions to this general framework exist, the concept remains valid in modern Islamic law jurisdictions.

### Gifting

In contrast to the quantitative limits on testamentary bequests, there are **no limitations** on the amount gifted during one's lifetime. Neither is there a limit on the timing of such gifts (except in the case of a gift offered during a terminal illness).







## 6. National Law Distinctions

The national laws of modern Arab states and Iran adhere to many of the traditional Islamic law rules, but diverge or provide exceptions to other traditional rules. The table below gives an overview of the most notable differences to the general rules set out above in five Arab states and Iran.

*These charts are illustrative. They are not meant to provide a complete view of the legal frameworks in any of the countries addressed and should not be used in place of legal advice on any of the areas described.*

	Egypt	Lebanon	Morocco	Tunisia	UAE	Iran
<b>Marriage</b>						
<b>To whom does the law apply</b>	Marriage laws are different for couples of different religions; in case of a mixed (religion) couple, there may be a preference for the law of the husband and/or for Islamic law	Marriage laws are different for couples of different religions; a court may treat mixed couples with its own law; generally the husband's law will apply	Marriage laws are different for couples of different religions; in case of a mixed couple in which one spouse is Moroccan and Muslim, the Family Code, based on Islamic law, will apply; Jewish family law is separate	Application of Tunisian law to all citizens, independent of religion; there may be different rules for foreigners	Application of UAE law to all citizens and to any foreigner who does not demand the application of his/her own law. For non-Muslim citizens, the rules of their respective religion will apply	Marriage laws are different for Shiite and non-Shiite couples; for mixed couples, courts will apply the law of the husband
<b>Who can marry</b>	Minimum age of 18	The different religions each have their own laws (18 religions, 15 personal status laws)  Sunni law: Minimum age of 17 (bride) and 18 (groom) unless court authorization	Minimum age of 18, unless court authorization; a court authorization for polygamy may be granted in exceptional circumstances	Minimum age of 18, unless court authorization. Polygamy is prohibited	Minimum age of 18, unless court authorization	Minimum age of 13 (girls) and 15 (boys), unless consent of <i>wali</i> (legal guardian) and court authorization
<b>Marriage contract</b>	Generally dower agreement; conditions possible; the marriage contract document includes an annex with a list of possible conditions to which the couple may agree	Generally dower agreement; conditions possible	Dower is a condition for valid marriage; necessary content of the contract set forth in the law; conditions possible  Spouses can decide to conclude a separate contract to take advantage of the common property regime for goods acquired during their marriage	Generally dower agreement. Marriage contract must be notarized  Spouses can agree to take advantage of the possibility of the common property regime (at the time of marriage or after the celebration; notarial deed necessary)	Generally dower agreement, the law sets maximum values for the dower; conditions possible	Generally dower agreement; no minimum or maximum dower, however enforcement independent of the husband's solvency only up to 110 gold coins ( <i>bahar azadi</i> ); for temporary marriage, a dower is a condition for validity  Marriage offices issue marriage certificate (booklet of 21 pages that includes standardized clauses and information about the spouses, the dower and financial agreements). Each clause is signed by both spouses. Spouses can add individual clauses



	Egypt	Lebanon	Morocco	Tunisia	UAE	Iran
<b>Formal requirements</b>	<p>Performance of ceremony by state employee [<i>mazun</i>] required for marriage between Muslims; or by an employee of Ministry of Justice [<i>shahr aqarij</i>] for marriage if one (or both) spouse(s) is a non-Muslim or not an Egyptian; Christian marriage has its own legal framework</p> <p>No marriage custodian</p>	<p>The different religions each have their own laws</p> <p>No civil marriage system currently</p> <p>Sunni law: Public announcement 10 days before marriage, 2 witnesses, conclusion and registration by the judge</p>	<p>Oral or written marriage contract, 2 witnesses</p> <p>Prior authorization by the family court to issue the marriage certificate (spouses must submit a number of documents); «homologation» of the judge is a necessary element of the contract</p>	<p>Performance by either 2 notaries or the state registrar; 2 honorable witnesses necessary</p> <p>Marriage abroad may be performed in a consulate or embassy or according to local law (and notification to the nearest consulate within 3 months)</p> <p>Purely religious marriage not recognized; marriage by proxy possible if notarized power of attorney</p>	<p>Generally notarization of the marriage contract required (performed by state employee [<i>mazun</i>] authorized to conclude marriages)</p>	<p>Declarations of groom and bride must be oral; marriage by proxy possible</p>
<b>Registration (of unofficial marriages)</b>	<p>In principle, customary marriages [<i>urfi</i>] are not recognized</p> <p>Registration is possible under certain conditions</p>	<p>The different religions each have their own laws</p>	<p>The 2004 reform has made unofficial marriages invalid. During a transition period, unofficial marriages could be subsequently registered until 2019</p>	<p>No recognition</p> <p>Violation of the legal preconditions makes a marriage void; criminal sanctions possible</p>	<p>In absence of notarization and registration, a marriage may be established by sharia law proof under observance of certain conditions</p>	<p>The law requires registration. This is not a condition of validity for the marriage but its violation leads to a criminal sanction</p> <p>Registration of temporary marriages only in case of pregnancy, spouses' agreement, or marriage contract obligation</p>
<b>Marital property</b>	<p>Separation of properties; no clear authority for common property regime</p>	<p>The different religions each have their own laws</p> <p>Sunni law: separation of properties</p>	<p>Common property scheme possible for the goods acquired during the marriage if set out in a document separate from the marriage contract</p>	<p>Separation of goods</p> <p>Option exists for common property regime, subject to rules set forth in 1998 law on common spousal property</p>	<p>Separation of goods</p>	<p>Separation of goods;</p> <p>Spouses can contractually agree upon rules for the matrimonial property regime</p>

	Egypt	Lebanon	Morocco	Tunisia	UAE	Iran
<b>Marital obligations</b>	<p>Besides financial obligations (providing maintenance), the husband has obligations to treat the wife kindly; the law still stipulates a duty of obedience for the wife</p> <p>Marital rape is not criminalized</p> <p>Adultery is a criminal offense (complaint of other spouse necessary)</p>	<p>The different religions each have their own laws</p> <p>Sunni law: husband's obligation of maintenance; judicial determination of appropriate maintenance possible; wife's duty of obedience</p> <p>Marital rape is not criminalized</p> <p>Adultery is a criminal offense</p>	<p>Principle of equal treatment since marriage law reform; still husband's obligation to provide maintenance and a home</p> <p>Adultery is a crime (complaint of other spouse necessary)</p> <p>Marital rape is not expressly criminalized (a lower court, however, has deemed rape within a marriage as a criminal act)</p>	<p>Obligation to conjugal life; respect and support; (family) maintenance mainly duty of the husband; wife must contribute if she has the means to do so</p> <p>Adultery is a crime</p> <p>Marital rape is not expressly criminalized but can be prosecuted</p>	<p>The law provides for several mutual rights of the spouses, as well as rights and obligations of each spouse, principally maintenance provided by the husband and obedience by the wife.</p>	<p>Duty to support and to treat each other kindly</p> <p>Husband: management of the family and maintenance                      Wife: right to maintenance and obedience if the husband fulfils his duty; right to the dower</p>



	Egypt	Lebanon	Morocco	Tunisia	UAE	Iran
<b>Dissolution of Marriage</b>						
<b>To whom does the law apply?</b>	Dissolution laws are different for couples of different religions; in case of a mixed (religion) couple, there may be a preference for the law of the husband and/or for Islamic law	Dissolution laws are different for couples of different religions; court may treat mixed couples with its own law	Dissolution laws are different for couples of different religions; in case of a mixed couple in which one spouse is Moroccan and Muslim, the Family Code, based on Islamic law, will apply; Jewish family law is separate	Application of Tunisian law to all citizens; there may be different rules for foreigners	Application of UAE law to all citizens and to any foreigner who does not demand the application of his/her own law; for non-Muslim citizens special provisions of their community or confession may apply	Dissolution laws are different for couples of different religions; for mixed couples, courts will apply the law of the husband
<b>Procedures</b>	Private divorce [ <i>repudiation</i> ] is permissible; husbands must register announcement at a religious notary office [ <i>mazun</i> ]; judicial divorce; <i>khul'</i>	The different religions each have their own laws  Sunni divorce: private divorce [ <i>repudiation</i> ] is permissible; judicial divorce (conciliation procedure prior to divorce); <i>khul'</i>	Private divorce is prohibited; conciliation procedure prior to divorce	Private divorce is prohibited; judicial divorce permitted on condition of conciliation procedure prior to divorce	Repudiation [recorded by judge]; judicial divorce; <i>khul'</i> [rescission by agreement]; conciliation procedure	Private divorce no longer permissible; either spouse can apply for a judicial divorce; conciliation procedure if non-amicable divorce  Registration necessary (reconciliation certificate and divorce decree lose their validity without registration) and marks the start of the waiting period
<b>Grounds for judicial divorce</b>	Women may request divorce for defects, imprisonment, absence, non-payment and prejudice; no-cause divorce over objections of husband permissible	The different religions each have their own laws  Sunni law: impotency or grave illness, absence, non-payment of maintenance, intolerability of cohabitation	Different forms of divorce; each always needs a judicial decision (on initiative of the husband or the wife or breakdown of marriage or mutual agreement)	Women and men have same rights regarding grounds for divorce (mutual agreement, application of the aggrieved spouse, breakdown of marriage); wife can apply for a divorce if her husband fails to provide maintenance	Judicial grounds: defects, non-payment of the dower or support, prejudice and discordance, absence and disappearance, imprisonment, oath  Judge may declare no-cause divorce if husband is "unduly obstinate in his rejection" of <i>khul'</i>	Husband does not need grounds, only formalities are to be fulfilled  Wife: legal (absence, refusal to pay maintenance and hardship) or contractual grounds  Mutual/amicable divorce possible
<b>Property division</b>	Separation of goods	The different religions each have their own laws  Sunni Law: separation of goods	Separation of goods in principle; possibility to opt for communal property as well as consideration of reciprocal contributions of the spouses (work, efforts and expenses incurred), rapprochement to community of acquisitions	Separation of goods in principle; since 1998 spouses can opt for communal property (for immovable property)	Separation of goods	Separation of goods  Possible remuneration for the wife for her work in the house during the marriage ( <i>ojrat ol-mesl</i> )  Possible contractual financial rights (standard clause)

	Egypt	Lebanon	Morocco	Tunisia	UAE	Iran
<b>Children</b>						
<b>To whom does the law apply?</b>	Laws regarding children are different for couples of different religions; in case of mixed (religion) couple, there may be a preference for the law of the husband and/or for Islamic law	Laws regarding children are different for couples of different religions; court may treat mixed couples' children with its own law	Laws regarding children are different for couples of different religions; in case of mixed couple in which one spouse is Moroccan and Muslim, the Family Code, based on Islamic law, will apply; Jewish family law is separate	Application of Tunisian law to all citizens; there may be different rules for foreigners	Application of UAE law to all citizens and to any foreigner who does not demand the application of his/her own law; for non-Muslim citizens special provisions to their community or confession may apply	Generally, the Iranian Civil Code applies
<b>Citizenship</b>	<i>Ius sanguinis</i> in principle (father or mother); presumed citizenship if child is born in Egypt to unknown parents	<i>Ius sanguinis</i> in principle (Lebanese father; through mother only exceptionally)	<i>Ius sanguinis</i> in principle (father or mother)  Presumed citizenship if child is born in Morocco to unknown parents  Children born abroad to unknown parents may acquire the citizenship shared by their foster parents after five years of foster care ( <i>kafala</i> )	<i>Ius sanguinis</i> in principle (father or mother) supplemented by elements of <i>ius soli</i> : birth in Tunisia (1) to unknown parents or (2) father and grandfather have also been born there	<i>Ius sanguinis</i> in principle (father; or mother if father unknown)  Acquisition of citizenship granted by a law  Naturalization	<i>Ius sanguinis</i> in principle (mother or father Iranian, marriage), some exceptions; birth in Iran to unknown parents
<b>Establishment of Paternity</b>	Marriage; acknowledgment ( <i>iqrār</i> ); possibly court action for determination of paternity and proof (witnesses, blood/DNA test after a court order)	The different religions each have their own laws  Sunni law: marriage; if paternity is denied or the mother unmarried, the child is a legitimate child of the mother. The mother can decide if she wants to acknowledge an illegitimate child; A man or woman can acknowledge a child whose ancestry is unknown; similarly, a child may acknowledge a man or woman as his father or mother	Engagement can be basis for a judicial determination of paternity  Marriage, acknowledgment, and, in the case of "erroneous sexual relations", by judicial determination or legally admissible evidence or testimony of two <i>adoul</i> (notary)	Valid marriage/cohabitation (presumption of paternity after 6 months), acknowledgment or testimony of two honorable witnesses; genetic testing (since 1998) allows establishment of paternity for natural children, a refusal of the father to submit to the testing may be seen as an implicit acknowledgment of paternity	Valid marriage, acknowledgment, proof or unambiguous scientific method (if marriage exists)	In general: marriage  Illegitimate children can be regarded as marital in relation to one or both parents in exceptional cases if parents had erred, e.g. concerning a marriage  Acknowledgment of paternity only if relationship is legally (if multiple recognition potentially medical test) and factually possible and confirmation by the child (if adult)



	Egypt	Lebanon	Morocco	Tunisia	UAE	Iran
<b>Adoption</b>	<p>Not allowed</p> <p>Only foster care [<i>kafala</i>] possible</p> <p>In Christian community, adoption is possible if the adopting parent is 40 years old and childless; no mutual legal right of inheritance</p>	<p>The different religions each have their own laws</p> <p>Adoption is only possible in the Jewish and Christian community, no full adoption</p>	<p>Not allowed</p> <p>Only foster care [<i>kafala</i>]</p> <p>Circular from 2012 limited the possibilities of adoption for foreigners; fostering [<i>kafala</i>] is now restricted to people domiciled in Morocco</p>	<p>Full adoption possible since 1958; besides, foster care /informal guardianship [<i>kafala</i>] is possible</p>	<p>Not allowed;</p> <p>Only foster care of orphans and children of unknown ancestry [<i>kafala</i>] possible</p>	<p>Married couples living in Iran may adopt a child (court decision necessary, the court will give a final decision after a trial period of 6 months); this kind of adoption generally does not lead to succession rights</p>
<b>Custody</b>	<p><i>Age of end of custody:</i> 15; may be extended until age 21/ completion of education/ marriage (majority: 21)</p> <p>Loss of custody: if mother remarries</p> <p><i>Does non-custodial parent have visitation rights: yes, Choice of the child after reaching 15 years which parent it wants to live with</i></p>	<p><i>Age of end of custody:</i> The different religions each have their own laws</p> <p>Sunni law: <i>Age of end of custody:</i> 12</p> <p>Loss of custody: if mother remarries (unless exceptions apply); father has right of (corporal) punishment, but if he endangers the health of the child, the judge may declare loss of custody; judges may make custody decisions based on best interests of the child</p> <p><i>Rights of guardian/custodian:</i> father may not remove child from the mother's place/travel without her consent</p> <p><i>Does non-custodial parent have visitation rights:</i> yes</p>	<p><i>Age of end of custody:</i> majority (18); custody rights shared during marriage</p> <p><i>Loss of custody:</i> if mother remarries and special circumstances do not exist, from age 15, the child can decide if the mother or father should have custody, father remains guardian</p> <p><i>Rights of guardian/custodian:</i> guardian may ask court to prohibit custodian from traveling with child outside of Morocco</p> <p><i>Does non-custodial parent have visitation rights:</i> visitation rights exist, details can be mutually agreed upon, otherwise the court will decide</p>	<p><i>Age of end of custody:</i> 18 or marriage; during marriage both parents share guardianship</p> <p><i>Loss of custody:</i> not dependent on religion of mother or remarriage; if custodian travels/ moves and guardian cannot exercise rights over the child, custody ends</p> <p><i>Rights of guardian/custodian:</i> custodian may travel with child to the extent the travel does not infringe on guardian's exercise of rights; father may not remove the child from mother's place of residence without mother's consent</p> <p><i>Does non-custodial parent have visitation rights:</i> yes</p>	<p><i>Age of end of custody:</i> 11 (m) and 13 (f) years; judicial extension possible (majority: 21, from age 18 facilities are possible)</p> <p><i>Loss of custody:</i> if requirement no longer fulfilled (same religion as child; mother's new husband must not be a man who is not in a marriage-exclusive relationship with the child)</p> <p><i>Rights of custodian:</i> Custodian may travel abroad only with consent of the guardian</p> <p><i>Does non-custodial parent have visitation rights:</i> yes, as ordered by a judge</p>	<p><i>Age of end of custody:</i> 7 years (majority: 18)</p> <p><i>Loss of custody:</i> By court order if well-being of the child endangered (e.g., mother neglects the child or loses her mental capacity); in case of a divorce, generally the father is appointed custody from the age of 2 (boys) and 7 years (girls)</p> <p><i>Rights of custodian:</i> custodian may not limit the other parent's visitation rights, especially by moving without court authorization</p> <p><i>Does non-custodial parent have visitation rights:</i> yes, as part of the divorce proceedings, the court decides on visitation</p>

	Egypt	Lebanon	Morocco	Tunisia	UAE	Iran
<b>Succession/Inheritance</b>						
<b>Applicable Law</b>	<p>Application of the law of the deceased person, whether Egyptian or foreign</p> <p>Impediment to inheritance in case of different religions: Muslims and non-Muslims may not inherit from each other respectively, non-Muslims of different religions can.</p>	<p>Muslims and non-Muslims have their own laws</p>	<p>Generally, the national law of the deceased applies</p> <p>If deceased is a Muslim, the Moroccan law will apply irrespective of nationality. Jewish succession law is separate</p> <p>For Moroccan nationals of other religion, Moroccan law applies in principle; in case of doubt, the law of the husband or father will apply</p> <p>Impediment of inheritance in case of different religions</p>	<p>Application of Tunisian law to all Tunisian citizens irrespective of their religion; for foreigners the applicable law is determined alternatively by their nationality or their last domicile or the location of the estate at the time of death</p> <p>Court ruling allows non-Muslim women to inherit from their Muslim husbands</p>	<p>Application of UAE law to all citizens and to any foreigner who does not demand the application of his/her own law</p> <p>No inheritance between persons of different religions</p>	<p>For Iranians, the religious law of the deceased applies to inheritance; for foreigners, the national law of the deceased applies</p> <p>«Forced successions»: disinheritance of legal heirs not possible except in case of an impediment</p>
<b>Testaments</b>	<p>No classical testament with appointment of heirs, merely bequests over up to one third of the estate (beneficiaries may be legal heirs; different religion is no impediment; execution of a part that exceeds one third only if heirs agree after the death of the testator)</p>	<p>Muslims and non-Muslims have their own laws</p> <p>Non-Muslims: freedom of the testator limited by the legal shares of the legal heirs</p> <p>Sunni law: heir may not be beneficiary of a bequest; bequests limited to one third of the estate</p>	<p>No classical testament with appointment of heirs, merely appointment of one or more persons with tasks and a guardian for the children and bequests over “free third” (except heirs are of age and consent); beneficiary may not be an heir</p>	<p>No classical testament with appointment of heirs, merely appointment of one or more persons with tasks and bequests over “free third” (except heirs consent); beneficiary of bequest may have different religion but may not be a legal heir</p>	<p>No classical testament with appointment of heirs; merely last will with bequests up to one third of the estate (unless consent of other heir(s), letters of consent can be established with the will); beneficiary may not be an heir unless all other major heirs consent</p>	<p>No classical testament with appointment of heirs; merely appointment of one or more persons with tasks and bequests over “free third” (unless consent of the heirs); irrespective of the general impediment to inheritance, the testator may also bequest non-Muslims or his legal heirs</p>



	Egypt	Lebanon	Morocco	Tunisia	UAE	Iran
<b>Formalities</b>	<p>Testator must be of age and in full possession of his mental capacities</p> <p>Form: public document or written and signed by the testator or document with authenticated signature</p> <p>Validity depends on the acceptance of the beneficiary</p>	<p>Muslims and non-Muslim deceased have their own laws</p> <p>Non-Muslims: public document or written by the testator and given to notary; if established abroad, the testament must be given to a notary or Lebanese consul</p> <p>Testator must be of age, of sound mind and capable</p> <p>Sunni Law: no specific form, can be established orally, testator must be of age</p>	<p>Testator must be at least 18 years old and have power of discrimination</p> <p>Beneficiary must be a person and no legal heir</p> <p>Bequest is a contract (oral, written or implied), public (with witnesses) or secret</p>	<p>Testator must be of age and in full possession of his capacities</p> <p>Form: written form, either as a public document or dated and signed by the testator</p>	<p>Two male adult Muslim witnesses with legal capacity required to confirm the will</p> <p>Testator must have mental capacity and have attained the age of majority</p> <p>Form: by words or in writing, or by recognizable sign</p> <p>Beneficiary must accept a will</p>	<p>Last will can be established personally (handwritten, dated and signed), officially or secretly (by the testator or a third person; testator must sign)</p>
<b>Legal heirs</b>	<p>Blood relation or marriage; Quranic [<i>fard</i>], agnatic [<i>aceb</i>] and cognatic [<i>zawou al-arham</i>] heirs</p> <p>Legal legacy [<i>wasseya wajba</i>] for children of a pre-deceased son or daughter of the deceased who do not have own right of succession (precedence over testamentary legacy)</p>	<p>Muslims and non-Muslims have their own laws</p> <p>Non-Muslims: Legal heirs inspired by principle of representation <i>per stirpes</i></p> <p>Sunni law: agnatic [<i>aceb</i>] and Quranic [<i>fard</i>] heirs</p>	<p>Blood relation or marriage; State's right to succeed to heirless property</p> <p>Quranic [<i>fard</i>] heirs take precedence over agnatic heirs</p> <p>Legal legacy [<i>wasseya wajba</i>] for children of a pre-deceased son or more distant male descendants</p>	<p>Order of succession mandatory for Muslims: blood relation, marriage or state's right to succeed to heirless property</p> <p>Differentiation between primary statutory Quranic heirs and agnatic heirs</p> <p>Legal legacy [<i>wasseya wajba</i>] for children of a pre-deceased son of the deceased who do not have own right of succession</p> <p>Daughters take precedence over remote agnatic heirs</p>	<p>Through blood relation or marriage</p> <p>Inheritance may be Quranic [<i>fard</i>] or agnatic [<i>aceb</i>] (or both, then cognatic [<i>zawou al-arham</i>])</p> <p>Legal legacy [<i>wasseya wajba</i>] for children of a pre-deceased son or daughter</p>	<p>Through blood relation or marriage</p> <p>Generally "first order" heirs (parents and children, partially as quota-heirs) will inherit alongside the spouse (quota-heir)</p>

	Egypt	Lebanon	Morocco	Tunisia	UAE	Iran
<b>Fixed share</b>	Fixed quotas for Quranic heirs ( $\frac{1}{2}$ , $\frac{1}{3}$ , $\frac{2}{3}$ , $\frac{1}{4}$ , $\frac{1}{6}$ , $\frac{1}{8}$ ), exact quota depends on constellation; primary heirs (son, father, mother, daughter, husband/wife) exclude other heirs	Muslims and non-Muslims have their own laws  Non-Muslims: obligatory share for descendants of 50%, for the spouse of 30% and the parents of 30%  Muslims: Quota depends on constellation	Fixed quotas for Quranic heirs ( $\frac{1}{2}$ , $\frac{1}{3}$ , $\frac{2}{3}$ , $\frac{1}{4}$ , $\frac{1}{6}$ , $\frac{1}{8}$ ), exact quota depends on constellation; primary heirs exclude other heirs	Fixed quotas for Quranic heirs ( $\frac{1}{2}$ , $\frac{1}{3}$ , $\frac{2}{3}$ , $\frac{1}{4}$ , $\frac{1}{6}$ , $\frac{1}{8}$ ), exact quota depends on constellation	Fixed quotas for Quranic heirs ( $\frac{1}{2}$ , $\frac{1}{3}$ , $\frac{2}{3}$ , $\frac{1}{4}$ , $\frac{1}{6}$ , $\frac{1}{8}$ ); exact quota depends on constellation	Exact quota depends on constellation
<b>Gifting</b>	A lifetime gift ( <i>donatio inter vivos</i> ), even in anticipation of death, will generally be valid and not affected by the succession (death of the donor) except if the donor suffers from an incurable illness leading to his death: deathly sick persons are limited in legal capacity, donations are regarded as bequests	Muslims and non-Muslims have their own laws  Non-Muslims: for lifetime gifting, the civil law on donations applies  Muslims: No limit for lifetime gifting (discussed in jurisprudence)	Deathly sick persons (if the illness leads to their death) are limited in legal capacity, donations are regarded as bequests and can only be made up to $\frac{1}{3}$ of the estate and not for the benefit of an heir, unless the (other) heirs consent	A lifetime gift ( <i>donatio inter vivos</i> ), even in anticipation of death, will generally be valid and not affected by the succession (death of the donor) except if the donor suffers from an incurable illness leading to his death: deathly sick persons are limited in legal capacity, donations are regarded as bequests	A lifetime gift ( <i>donatio inter vivos</i> ), even in anticipation of death, will generally be valid and not affected by the succession (death of the donor) except if the donor suffers from an incurable illness leading to his death: deathly sick persons are limited in legal capacity, donations are regarded as bequests	Gifts among living persons cannot be revoked after either the death of the donor or the gifted

