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## Family law in Syria: a plurality of laws, norms, and legal practices

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## APPENDIX

### Marriage and divorce according to the Syrian Law of Personal Status

#### I Marriage: legal requirements and consequences

Article 1 of the Syrian Law of Personal Status (SLPS) defines marriage as:

‘Marriage is a contract between a man and a woman, who is lawfully permitted to him, with the aim to establish a bond for a joint life and procreation.’

##### i Offer & acceptance, witnesses, majority, and *compos mentis*

A marriage involves offer (*ijāb*) by one contracting party and acceptance (*qabūl*) by the other (Art. 5). Both parties have to hear and understand the offer and acceptance, and need to understand what the purpose of this contract is, namely marriage (Art. 11.1). The offer and acceptance ought to take place in one session, clearly and audibly expressed in the presence of witnesses (Arts. 11-12).

The witnesses can be either two men or one man and two women, all of whom should be ‘of age’, Muslim, and *compos mentis* (Art. 12). The betrothed parties, like the witnesses, ought to be ‘of age’ (*bulūgh*) and *compos mentis* (*‘aql*) (Art. 15.1). Paragraph two of the same article states that the judge may permit a ‘lunatic’ (*majnūn*) or a ‘feeble-minded’ person (*ma’tūh*) to marry if a group of psychiatrists has established that the marriage will be beneficial to his recuperation.

##### ii Age of capacity

The age of capacity for marriage is 18 years for a young man (*fatān*) and 17 years for a young woman (*fatāh*) (Art. 16).

If the betrothed parties are younger than the required age, they can apply to the judge for permission to get married, provided they are (physically) mature, or, as article 18.1 reads:

‘When an adolescent boy (*murāhiq*) claims to be physically mature (i.e. *bulūgh*) after attaining the age of 15, or an adolescent girl (*murāhiqa*) after attaining the age of 13, the judge may allow the boy or girl to be wed, if he deems the petition to be sincere and they are physically capable.’ [i.e. to have sexual relations]

Article 18.2 stipulates that if the legal guardian (*walī*) of the (minor) bride is her father or grandfather, the couple will need his consent to the marriage.

A judge may withhold permission for a marriage if he finds the betrothed parties show a disparity in age, and if he can see no benefit in the marriage (Art. 19).

### iii Marriage guardian (*walī*)

Article 20 stipulates that when a mature girl (*kabīra*), who has reached the age of 17, approaches the court with a marriage request, the judge will first ask her legal guardian for his opinion. The guardian is required to respond to this request within a set time period. If her guardian does not object to the marriage or if his objections are ill-considered, the judge shall give permission for the couple to get married, provided the betrothed parties are of equal social status.

In general, the father or the grandfather will act as the legal guardian to the marriage. If either one is not available or suitable, another male agnate, in the order of inheritance, can act as the marriage guardian, provided he is in a degree of consanguinity precluding marriage (*mahram*) (Art. 21). Arts. 33-35 define exactly who is forbidden in marriage due to consanguinity and/or foster relationships. If the future bride or groom does not have any paternal family members who can act as the legal guardian, the judge will act as the guardian (Art. 24).

In addition to the SLPS provisions, reference is also made to article 34 of the Qadri Pasha Code (Shaqfa 1998: 191), this article reads as follows:

‘The *walī* is a condition for the validity of the marriage of a minor boy and a minor girl,<sup>368</sup> and adults who lack full legal capacity (*ghayr mukallaf*). The *walī* is not a condition for the validity of the marriage of free, sane, mature (i.e. past puberty) men and women – rather, their marriage is executed without a *walī*.’<sup>369</sup>

In his commentary on the Syrian laws of personal status, Shaqfa writes that when a bride (the same accounts for the groom) has reached the age of puberty, i.e. she is ‘of age’ (*bāligha*), and she is *compos mentis* (*‘āqila*), she can contract a marriage by herself, without her legal guardian (Shaqfa 1998: 199). Nevertheless, he continues, it is recommended for a mature and sane woman to delegate the authority of executing her marriage to a guardian since he has more experience in life than she does (1998: 199).

#### iv Suitability of the groom (*kafā’a*)

The suitability of the husband receives considerable attention in the SLPS and is dealt with in a separate section entitled *kafā’a* (Arts. 26-32). Article 20 (concerning legal capacity) already mentioned the concept of *kafā’a*, meaning that the betrothed parties ought to be of equal social status, regardless of their age.

Article 26 reads that a marriage can only be valid if the husband is of equal social status to the wife. The other way around, i.e. a man marrying a woman beneath his social standing, is not considered problematic (see Art. 62 Qadri Pasha). Article 28 states that the custom of the country (*‘urf al-balad*) will determine what can be designated as ‘equality of status’.

The requirement of social parity is the exclusive right that belongs to the bride and her guardian (Art. 29; Welchman 2007: 73). The legal guardian may file a petition

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<sup>368</sup> Whether the (minor) bride is a virgin (*bikr*), i.e. not previously married, or a non-virgin girl (*thayyib*), i.e. widow or divorcée, is irrelevant (Shaqfa 1998: 199).

<sup>369</sup> The translation is taken from Welchman (2000: 125) and slightly adapted by the author.

to the court for annulment of the marriage (*faskh al-nikāh*) when his female (mature) ward has given herself in marriage, i.e. without his approval, to a husband who appears to be beneath her social standing (Art. 27).

When, however, the wife is pregnant, or the decline in social status occurred during the marriage, the bride and her guardian lose the right to ask for an annulment of the marriage (Arts. 30-31). If, after the conclusion of the marriage contract, it turns out that the husband has lied about his social standing, both the wife and her guardian may file a petition for annulment of the marriage contract (Art. 32).

## v Marriage registration

Article 40 paragraph 1 stipulates that a couple needs to submit a marriage petition to a *shar'iyya* district judge (*qādī al-manṭiqa*), which should include the following documents:

- i. a certificate issued by the local official (i.e. *mukhtār*<sup>370</sup>) stating the name, age, and place of residence of both parties, the name of the marriage guardian, and a statement that there is no lawful impediment to the marriage (Art. 40.1 sub a);
- ii. a certified extract from the Civil Registry (*qayd nufūs*) certifying the betrothed parties' civil status (Art. 40.1 sub b);
- iii. proof of a premarital medical examination attesting that there are no medical impediments to their marriage (Art. 40.1 sub c);
- iv. permission for marriage for those who serve in the army or those who are subject to military service (Art. 40.1 sub d);
- v. permission from the Security Department when one of the spouses is a foreigner (Art. 40.1 sub e).<sup>371</sup>

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<sup>370</sup> A *mukhtār* (lit. 'chosen person') is the chief or headman of a village or a city district, who is responsible for, amongst other things, keeping record of births and deaths of the population of his village or district. It is an administrative position created by the Ottomans in the nineteenth century, which continues to exist in Syria today (Findley 1993).

<sup>371</sup> See also article 1 of Legislative Decree No. 272 ('Conditions regarding Marriage of Syrians and Palestinians to Non-Arab Women') of 4 November 1969. A foreign spouse needs to submit additional documents, including certified documents regarding the spouse's civil status and religion issued through the Embassy, and proof of a HIV-test (see website of the Damascus Bar Association:

The SLPS also allows for the registration of customary or traditional marriages (i.e. ‘*urfī* marriages) *ex post facto* under article 40 paragraph two. This article stipulates that a customary marriage can be registered once the required legal procedures are met. If, however, a child is born or a pregnancy is apparent, the marriage will be recognised without the required procedures.

All marriages need to be registered in the court’s registry, after which the court sends a copy of the marriage certificate (*ṣakk al-zawāj*) within ten days to the Department of Civil Affairs (*dā’irat al-aḥwāl al-madaniyya*) (Art. 45.1).

The same registration procedure applies to the certification of marriages (*tathbīt al-zawāj*), unilateral divorce by the husband (*ṭalāq*, i.e. the ‘administrative’ or registered *ṭalāq*), proof of paternity (*nasab*), and death of a missing person (Art. 45.3).

## vi Valid, irregular and invalid marriages

If all the required conditions and procedures stipulated by the SLPS are met, the marriage shall be considered valid (*ṣaḥīḥ*) (Art. 47).

In the event that some conditions are not fulfilled, the marriage is considered irregular (*fāsid*), meaning it is subject to annulment by a judge (Art. 48.1). Examples of irregular marriages are, amongst others, a marriage contracted under duress (*ikrāḥ*), a marriage contracted without witnesses, or when the betrothed parties or the witnesses did not have the competence to act.

Some marriages cannot be repaired and are considered invalid or void (*bāṭil*) from the very beginning. The only example of a void marriage explicitly mentioned in the SPLS is a marriage between a Muslim woman and a non-Muslim man (Art. 48.2). An invalid marriage is considered non-existent under the law, even if the purported marriage was consummated (Art. 50).

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<http://www.damascusbar.org/english/LL%20Eng%20S%20marriage%20with%20foreigners.htm>  
accessed on 25 June 2013).

## vii **Legal effects of a consummated, irregular marriage**

An irregular marriage that has not yet been consummated shall be considered invalid and will not produce any legal effects associated with a valid marriage (Art. 51.1). However, consummation (*dukhūl*) of an irregular marriage does entail certain legal effects, namely:

- a portion of the dower has to be paid (either the proper dower or, if the dower was specified, the specified dower, whichever is the smallest (Arts. 51.2 sub a and 63 SLPS);
- children born from such a marriage shall receive the father's family name (Art. 51.2 sub b in conjunction with article 133 SLPS);
- impediment to marriage due to affinity (*muṣāhara*) (Art. 51.2 sub c);
- the rules pertaining to payment of
  - (i) post-divorce maintenance (*'idda nafaqa*) following the separation by or death of the husband, and
  - (ii) maintenance following divorce during the waiting (*'idda*) period, will come into effect;
- rules regarding hereditary succession between the spouses, however, do not apply (Art. 51.2 sub d).

A wife who entered into an irregular marriage in good faith shall be entitled to marital maintenance (*nafaqa zawjiyya*), as long as she is unaware of the defective nature of the marriage (Art. 51.3).

## II **The effects of marriage: marital rights and duties**

Part IV of the SLPS deals with 'the effects of marriage' and is subdivided into three sections: dower, housing and maintenance, all of which are financial obligations falling upon the husband, in return for certain obligations falling upon the wife.



### viii Dower

The stipulation of a dower (*mahr*) is a vital condition for a valid marriage, whether it is specified in the contract or denied (Art. 53). The dower is a wife's prerogative and a husband's obligation (Arts. 53 and 60). In fact, an unpaid dower is considered a debt (*dayn*) of the husband to his wife (Art. 54.3 and 5).

The SLPS stipulates that the amount of the dower may vary, in that there is no upper or lower limit to it (Art. 41.1 and 2). However, distinction is made between the proper dower (*mahr al-mithl*) and the specified dower (*mahr al-musammā*). When the dower is not specified in the contract or when the specified dower is irregular, a proper dower will be determined based on that what is considered equal to that of her peers (Art. 61.1). To determine a suitable dower amount commensurate with that of her peers, the judge shall follow the local custom (*'urf*) (Art. 55).

A dower is generally divided into two parts, namely a prompt dower (*mahr mu'ajjal*) and a deferred dower (*mahr mu'ajjal*). The prompt dower ought to be paid upon conclusion of the marriage contract (Art. 55); the deferred part has to be paid when the marriage is terminated due to an irrevocable divorce or death (Art. 56).

### ix Payment of the dower and consummation of marriage

When a husband divorces his wife before the marriage was consummated or before the couple has had the opportunity to consummate the marriage, i.e. valid seclusion (*al-khalwa al-ṣaḥīḥa*), the husband has to pay half of the dower to his wife (Art. 58).

If, however, in the event of an irrevocable divorce, the husband can prove it is his wife's fault that they are irrevocably divorced, his obligation to pay the dower expires (Art. 59).

## x Maintenance obligations of the husband

The husband's maintenance (*nafaqa*) obligations include the following: housing, clothing, food, medical care, and domestic help; the latter only if this is appropriate to her social standing (Art. 71.1). The husband's obligation to provide a marital home for the wife is addressed in a separate section of the SLPS, namely in articles 65-70.

The husband ought to provide his wife a house that is suitable to her social standing (Art. 65). In case of polygamy, the first wife needs to consent to sharing the marital home with a co-wife (Art. 67), and he needs to provide equal housing to all his wives (Art. 68). A husband cannot house his wife with his relatives if it is established that co-habitation with them would damage her; however, if he happens to have a minor child, who has not yet reached the age of discretion (*ghayr al-mumayyiz*), she will have to accept the child into their household (Art. 69).

The level of maintenance to be provided by the husband depends on his financial situation, although a minimal level (*ḥadd al-kifāya*) has to be met (Art. 76). The amount of maintenance may be increased or decreased due to inflation, deflation or a change in the financial situation of the husband; a claim for an increase or decrease of maintenance can be backdated up to a maximum of six months (Art. 77).

## xi Obedience of the wife

After the wife has received the prompt dower, she is obliged to live together with her husband (Art. 66). The issue of co-habitation is closely connected to the concept of disobedience (*nushūz*). Article 74 stipulates that if a wife is disobedient (*nāshiza*) to her husband, she loses her right to maintenance, for as long as she is disobedient.

A wife will be considered disobedient if she leaves the conjugal house without a lawful reason or if she prevents her husband from entering her house before asking him to be moved to another house (Art. 75). A wife may also forfeit her

maintenance right if she works outside the house without her husband's consent (Art. 73).

If the husband, however, did not yet pay the prompt dower or if he did not prepare a suitable marital home for her, meaning that he has provided a house that meets the legal requirements (a *maskan shar'i*), she may refuse to co-habit with him (Art. 72.2).

### III Dissolution of marriage: types, requirements and consequences

#### xii **Repudiation (*ṭalāq*) by the husband**

*Ṭalāq* is a unilateral repudiation of a wife by the husband. It is the standard form of divorce and is regulated in articles 85-94.

Article 85.1 stipulates that a man of eighteen years or older has the legal capacity to divorce his wife by *ṭalāq*. A married man who has not yet attained the age of 18, but who is considered legally mature (*bulūgh*), has two options to divorce: (i) a judge will pronounce the *ṭalāq* (*taṭlīq*), or (ii) the young man's own *ṭalāq* will be authorised by the judge if the judge finds some benefit (*maṣlaḥa*) in it (Art. 85.2).

A husband can simply pronounce the formula 'I divorce you' either verbally or in writing (Art. 87.1). A husband can also delegate his *ṭalāq* right to someone else, i.e. divorce by proxy, including his own wife (Art. 87.2). A delegated *ṭalāq* right to the wife (a *tafwīḍ al-ṭalāq*) has to be laid down in the marriage contract (Shaqfa 1998: 381-82). If such a clause is inserted into the contract, the wife is allowed to divorce herself from her husband when, for example, he marries another wife.

Each *ṭalāq* has to be pronounced in a separate session. The SLPS does not recognise a so-called 'triple *ṭalāq*', i.e. the formula 'I divorce you' said three times in a row

(Art. 92). A 'triple *ṭalāq*' is considered a single *ṭalāq*, thereby giving the couple the opportunity to reconcile (Takim: 443).

The SLPS considers a repudiation pronounced by a man who is intoxicated, under duress, or overwhelmed by anger, and therefore does not know what he is saying, to be without legal effect (Art. 89). If a repudiation is intended only as a threat, to induce some action, or as an oath, it is also subject to nullification (Art. 90).

### **xiii Revocable and irrevocable *ṭalāqs***

A distinction has to be made between a revocable (*raj'ī*) and an irrevocable (*bā'in*) *ṭalāq*. A revocable *ṭalāq* means that the husband may revoke the divorce by taking his wife back during the waiting period (*'idda*) (Art. 118.1).

However, this revocation right is not unlimited; the maximum number of revocable *ṭalāqs* is two (Art. 91), after the third *ṭalāq* the divorce becomes irrevocable and thus final (*bā'in*) (Art. 94).

Other types of final, irrevocable *ṭalāqs* are:

- *ṭalāq* pronounced before the marriage was consummated or valid seclusion occurred;
- 'divorce for compensation' (*al-ṭalāq 'alā badal*) or (*mukhāla 'a*) divorce;
- judicial divorce on the ground of a defect of the husband that prevents consummation of the marriage;
- divorce on the grounds of discord between the spouses (Arts. 94, 108; Shaqfa 1998: 403).

In the event that the husband does not revoke a *ṭalāq* during the waiting period, the marriage will be considered dissolved once the waiting period has elapsed (Art. 118.2). If the couple wants to be re-united again, they would have to renew their marriage, thus entering a new contract, which should also include a new dower (Art. 119; Shaqfa 1998: 403).

A husband who pronounced three *ṭalāqs*, after which the divorce has become final, can only re-marry his wife after she first marries and divorces another man. Only then she can enter into a new marriage with her former husband (Arts. 120 and 36).

**xiv Arbitrary divorce** (*ṭalāq al-ta'assuf*)

Article 116 stipulates that when a man pronounces an irrevocable *ṭalāq* while he suffers from a deadly disease or he is in a bad state and he subsequently dies because of his disease or condition during her waiting period, her right to inherit from her deceased husband will not be forfeited, provided she has the legal capacity to inherit from him in the period from the pronouncement of the *ṭalāq* until his death.

Article 117 enables the court to honour a woman's claim for compensation from her ex-husband when it is apparent to the court that the husband acted arbitrarily and divorced her without reasonable cause (*sabab ma'qūl*). If she, as a result thereof, will suffer hardship and poverty, the court may impose compensation payments upon the ex-husband, thereby taking his circumstances and the degree of the arbitrariness into account.

The husband can be forced to pay maintenance (*nafaqa*) up to three years, in addition to the regular post-divorce maintenance (*'idda nafaqa*). Finally, the article reads that the judge may, in accordance to the circumstances, impose either a lump sum payment or payment in monthly instalments. There is no prescriptive period for filing a compensation claim based on arbitrary divorce ('Atari 2006: 121).<sup>372</sup>

The husband has to prove he had a lawful reason (*sabab mashrū'*) to divorce her ('Atari 2006: 121; Shaqfa 1998: 434);<sup>373</sup> while the wife has to prove she is impoverished (Shaqfa 1998: 435). However, a husband who arbitrarily divorces his

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<sup>372</sup> Court of Cassation, *shar'īyya* chamber, 20 November 1970 (no case number mentioned).

<sup>373</sup> Court of Cassation, *shar'īyya* chamber, 16 March 1963 (no case number mentioned).

wife shall not be obliged to pay compensation when there are others, for example relatives, who can financially support her ('Atari 2006: 121).<sup>374</sup>

#### xv *Mukhāla'a* divorce

*Mukhāla'a* divorce proceedings are regulated in articles 95-104. In a *mukhāla'a* divorce, the spouses sign a divorce contract in which the husband agrees to divorce his wife, in exchange for which the wife agrees to renounce some or all of her financial rights.

A *mukhāla'a* contract has to meet the following requirements: a valid marriage, both parties must have legal capacity (Arts. 85 and 95); agreement of both parties through exchange of offer and acceptance (Art. 96), and it should include a compensation payment (Shaqfa 1998: 446-453). However, a wife who has not yet reached the age of majority (*sinn al-rushd*) cannot be obliged to pay the compensation payment without the consent of her financial guardian (*walī al-māl*) (Art. 95.2).

There has to be a compensation payment (*badal al-khul'*), i.e. a recompense or consideration that the wife offers to the husband in exchange for divorce, for a *mukhāla'a* divorce to take effect. Without a compensation payment the divorce would not be considered a *mukhāla'a* divorce, but a regular revocable *ṭalāq* (Art. 100).

The contracting parties are free to decide on the amount or value of the compensation (Art. 97). If another payment besides the dower and marital maintenance is stipulated in the contract or when nothing is stipulated in the contract, in either event rights connected to the dower and the marital maintenance will be forfeited (Art. 98 and 99).

If a divorcing couple stipulates that the husband will be dismissed, in exchange for divorce, from paying nursing fees to the wife (mother) or when it is agreed that the

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<sup>374</sup> Court of Cassation, *shar'īyya* chamber, decision number 647/693, 28 September 1981; Welchman 2007: 127.

child will stay with the wife (mother) for a specified period, and if the wife then remarries or when she leaves the child, the ex-husband may claim the equivalent amount for the nursing fees or the child maintenance for the remaining period (Art. 102.1). It is however not possible to stipulate that the husband will take a child in his care while the child is in an age where he/she is entitled to stay with his/her mother, i.e. the nursing (*hādāna*) period (Art. 103).

#### **xvi Reconciliation before registration of *ṭalāq* and *mukhāla‘a***

When a *ṭalāq* or a *mukhāla‘a* action is taken to court, the judge will have to defer acting upon the case for one month in the hope of reconciliation between the spouses (Art. 88.1).

Once that month has passed, both parties will be called to appear in court if the husband persists in his action for divorce (*ṭalāq*) or if the couple persists in their *mukhāla‘a* request. The judge will listen to their disagreement and has a legal duty to try to resolve their differences. To this end the judge will involve the families of the spouses and any other person capable of resolving those differences (Art. 88.2).

If the reconciliation attempts fail, the judge can allow for the registration of the *ṭalāq* or the *mukhāla‘a* contract (Art. 88.3).

If neither spouse follows up on the divorce action within three months after the filing of the request, i.e. does not (re-)appear in court to take action; the request will be considered dropped (Art. 88.4).

#### **xvii Judicial divorce (*tafrīq*)**

The SLPS recognises various grounds for judicial divorce (*tafrīq*), divided into four types:

- V. *tafrīq* on the grounds of disease or defect (*‘ilal*), which include:
  - a. a husband’s defect which prevents consummation of the marriage, provided the wife does not suffer from the same defect (Art. 105.1);

- b. a husband who has become insane after the marriage conclusion (Art. 105.2);
- c. a husband's impotence (Art. 106.2);

A wife cannot seek divorce on the grounds of her husband's defect under article 105, if she knew about it before the marriage conclusion or agreed to accept it (Art. 106). The judge will determine whether the disease or defect is curable or not, if it is incurable he will dissolve the marriage. If, however, there is a possibility for a cure, the judge should defer the claim for a period of maximum one year in the hope of recovery, if the husband is not cured, the judge may dissolve the marriage (Art. 107). A divorce issued on one of the grounds listed above will be a final divorce (*ṭalāq bā'in*) (Art. 108).

**VI. *tafrīq* on the grounds of absence or disappearance (*ghayba*)**

When a husband is absent or missing without a reasonable justification **or** when he is sentenced to more than three years in prison, the wife can, after one year of his absence or imprisonment, file a petition for divorce, even if the husband has the financial means to support her (Art. 109.1). A divorce on this ground is revocable, for if the husband reappears or is released from prison during the waiting period, he can take his wife back (Art. 109.2).

**VII. *tafrīq* on the grounds of non-payment of maintenance (*'adam al-infāq*)**

A wife may seek divorce when her husband abstains from paying maintenance to her, when he is capable of doing so and his inability to pay cannot be proven (Art. 110.1). If the husband is absent or he proves his inability to pay, the judge may give the husband time (not more than three months) to mend his ways; if he fails to do so, the judge will pronounce the divorce (Art. 110.2). A divorce on this ground is also revocable, for the husband can take his wife back during the waiting period provided he proves he has sufficient financial means and he is prepared to pay maintenance (Art. 111).



VIII. *tafrīq* on the grounds of discord between the spouses (*shiqāq bayna al-zawjayn*)

Both spouses can bring a judicial divorce petition to court on the grounds of discord, claiming that the other is causing so much harm (*ḍarar*) that it is impossible to continue their marriage (Art. 112.1). If harm can be proved and the judge fails to reconcile the spouses, he can divorce them; this divorce will be considered an irrevocable divorce (Art. 112.2). If harm cannot be proved, the judge will postpone the proceedings for at least a month in the hope of reconciliation (Art. 112.3).

**xviii Judicial divorce and court-ordered arbitration**

Article 112 paragraph 3 stipulates that if the plaintiff persists in his/her claim and reconciliation cannot be achieved, the court will appoint two arbiters from the family of the spouses or persons who the judge considers capable of bringing about reconciliation.

If reconciliation efforts by the arbiters fail and harm is established and it has been established that discord is caused by 'wrongdoing' (*isā'a*) of the husband, the arbitrators will decide upon an irrevocable divorce (Art. 114.1).

If the discord for the greater part is to blame on the wife or equally caused by both parties, the arbiters shall decide upon judicial divorce on condition that the wife returns the full or part of the dower, as is deemed appropriate considering the degree of the 'wrongdoing' (Art. 114.2).

If the arbiters find no fault with either of the spouses, they may propose to dissolve the marriage by a *mukhāla'a* divorce, but only if the wife agrees to give up her financial rights in exchange for divorce. This latter option is only possible when the arbiters are convinced that discord between the spouses is deep-rooted and cannot be solved (Art. 114.3).

When the two appointed arbitrators complete the arbitration procedure, they submit a report to the judge (Art. 115). When a judge rejects the report of the

arbiters, he will appoint two other arbiters or he will add a third one (Art. 114.4). A third arbiter has to side with one of the dissenting arbiter's advice, as he cannot deliver his own independent advice.<sup>375</sup>

### **xix      Waiting period and post-divorce maintenance**

The waiting period is generally three complete menstrual cycles after the pronouncement of the divorce for a menstruating non-pregnant woman (Art. 121.1). The duration of the *'idda* for a widow is four months and ten days (Art. 123), for pregnant women until she gives birth or miscarries (Art. 124), for women who have had no menstruation for an extended period it is one complete year (Art. 121.2), and three months for those who are in their menopause (Art. 121.3).

During the *'idda* period following divorce, annulment of the marriage or death, a woman is not allowed to remarry.

When the marriage is not consummated or when it is established that they did not have the opportunity to consummate the marriage, the compulsory waiting period (*'idda*) does not have to be observed (Art. 126).

Article 83 (in conjunction with article 125) stipulates that a husband is obliged to pay his ex-wife post-divorce maintenance (*nafaqat al-'idda*), for the period that she is serving the waiting period, following *ṭalāq*, judicial divorce (*tafrīq*), annulment (*faskh*) or death.

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<sup>375</sup> Personal communication with senior lawyer 'Ali Mulhim, Damascus, 13 April 2008.

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