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## **KUWAIT**

### **Overview**

The Kuwaiti legal system has been influenced by a mixture of English common law, French civil law, Islamic principles and Egyptian law. Article 2 of the Constitution of 1962 reads that Islam is the religion of the State and that the Sharia is a main source of legislation. Other sources of law include legislation, custom and the principles of the law of nature and rules of justice. Article 1 (2) of the Civil Code states that in the absence of sufficient legislative provision a matter should be resolved according to custom and then Islamic jurisprudence. The Kuwaiti Personal Status Law (KPSL) was introduced by law No.51 in 1984.

The majority of the Kuwaiti population are Sunni Muslims following the Malaki School of law. There is a significant Shia Jaafari minority and also communities of Christians.

### **Foreign Court Orders**

Foreign court orders are not enforced if they contradict local law and practise or if the country of the court issuing the order does not recognise reciprocity of Kuwaiti orders. According to Article 199 of Law Decree 38 of year 80, a foreign judgement may only be implemented if the verdict was issued by a competent court, if all parties involved were properly represented, if the order does not contradict any order passed in Kuwait and if it is not in violation of public order or ethics in Kuwait, which are based on Islamic principles.

### **Court Structure**

The Kuwaiti court system can be divided into three levels. At the first level is the Court of First Instance, which is further divided into two divisions.

One division has jurisdiction over cases involving a value of less than 5000 Kuwaiti Dinars, the second over cases exceeding 5000 Dinars. The Court of First Instance has jurisdiction over civil, commercial, penal and personal status matters. There is no appeal for civil and commercial cases where the penalty is less than 1000 Dinars. In penal cases there is no appeal if the penalty is a prison term of less than three years or a fine of less than 250 Dinars. In some areas, including Ahmadi, Jahra, Farwaniya, Hawally and Al Asima, there are Summary Courts dealing with civil, commercial, personal status and rental matters.

The Court of Appeal is the second level of the court structure and at the highest level is the Court of Cassation, which was established in 1990 and is the court of final appeal. This court is divided into commercial, civil, personal status and criminal chambers.

The personal status chambers in all courts are further divided into Sunni, Shia and non-Muslim chambers.

### **Filiation**

A child is legitimate if born at least six lunar months after the conclusion of a marriage, according to Article 166 of the personal status code. In these circumstances ties of kinship are automatically established between the child and the father and his family. This relationship is established even if the marriage is irregular (*fasid*). If the child is born within six months after the conclusion of a marriage the relationship between the husband and the child is not confirmed unless the husband declares the child to be his and obtains official papers to this effect. A child born outside a marital relationship is illegitimate and has no legal relationship to the father even if the father declares the child as his. In these circumstances the father does not have rights or authority over the child and the child is not entitled to receive maintenance or to inherit from the father or the father's family.

Adoption is prohibited but the concept of fostering is established in the Family Fostering Act No.82 of 1977.

## **Custody**

According to Article 189 of the KPSL, the mother has the most right to custody of her children in the event of divorce. After the mother the right passes in the first instance to the mother's mother, followed by the maternal aunt, the mother's maternal aunt, the mother's paternal aunt, the paternal grandmother, the father, the sister, the paternal aunt, the father's paternal aunt, the father's maternal aunt, the daughter of the brother and the daughter of the sister. If there are two persons with equal rights to custody of a child a judge has the power to decide who is most suitable for the role of custodian. Article 191 states that if the person with the right of custody remains silent about that right for a year without good reason they will lose their claim to custody.

Article 190 stipulates that the custodian must be adult, sane, honest and able to raise the child and safeguard his or her health and moral upbringing. If a male is awarded custody of a female he must be among those prohibited from marrying her. He must also be able to provide a female carer who is able to oversee the nurturing of young children in his care. For Sunni Muslims of the Maliki School the period of custody continues until a male child reaches puberty. In Islamic law the maximum age recognised for puberty in males is fifteen. The mother retains custody of a female child until she marries, as established in Article 194 of the personal status code.

The mother may lose custody before this if she is incapable of raising the child according to religious standards or if she remarries someone who is not a *mahram* to the child. If the mother is non-Kuwaiti the court may judge that she is unable to meet the requirements to raise the child and will award custody to the Kuwaiti father. Article 192 states that a non-Muslim may exercise custody over a Muslim child until he or she is able to discern in matters of religion. The non-Muslim will lose custody of a Muslim child if he or she begins to grow accustomed to a religion other than Islam even if the child is not considered able to discern in matters of religion. In all cases the longest that a Muslim child may stay in the custody of a non-Muslim is until he or she has reached the age of seven.

## **Guardianship**

Article 209 of the personal status law states that the person with the most right to the guardianship of a minor is the father, followed by the father's

father and the male relations in the order of inheritance. If the father and grandfather are not available and no testamentary guardian has been appointed the court can appoint a guardian.

### **Access**

Access to a child is guaranteed for both parents and grandparents according to Article 196 of the KPSL. If an agreement on contact arrangements cannot be reached the matter can be taken to court where the day, time and place of contact visits will be set. If the custodian denies the parents or grandparents access to the child they can apply to the court to be awarded visitation rights. The custodian cannot travel with the child outside the country of residence without the permission of the guardian. During the period of custody the guardian cannot remove the child from the country of residence without the permission of the custodian.

### **Non-Muslim Family Law**

Article 346 of the KPSL states that this law shall apply to those Muslims who follow the Maliki School of Islamic Law. Those who follow another school will have the principles of their school applied to them. Christian family matters are subject to Ecclesiastical Courts but where the parties are of different religions or follow different sects the KPSL will be applied to them. For foreign nationals the law of the husband's country of domicile applies.

### **Nationality**

A Kuwaiti man automatically transmits his nationality to his children wherever they are born. A Kuwaiti woman cannot transmit her nationality, unless the father is unknown. Dual nationality is not recognised. Article 11 of the Kuwaiti Nationality Act No.15 of 1959 states that a Kuwaiti shall forfeit his nationality if he chooses to adopt a foreign nationality.

### **Leaving the Jurisdiction**

A minor must have the permission of his or her father to leave the country. Neither the guardian nor the custodian may travel outside Kuwait with the child without the permission of the other. If one parent is deceased then the

surviving parent must obtain permission to travel from the Department of Minor's Affairs.

### **International Law**

Kuwait ratified the UN Convention on the Rights of the Child in 1991, entering a general reservation against any provisions that are deemed incompatible with Islamic law and a declaration against Articles 7 and 21.

### **Child Abduction**

According to Article 178 of the Penal Code, the forcible abduction of a child is punishable by up to seven years imprisonment. Article 183 stipulates that the abduction, concealment or exchange of a newborn baby is punished by a penalty of up to ten years imprisonment.

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