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THE DISSOLUTION OF THE MARITAL BOND IN ALGERIAN LAW

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Abstract:

This study examines the dissolution of the marital bond in mixed marriages under Algerian law in light of the increasing prevalence of such marriages resulting from technological advancement and the ease of international communication and mobility. It highlights the importance of marriage as a fundamental social and legal institution upon which the family and society are built, emphasizing its legal consequences that extend beyond the spouses to society as a whole. The study also analyzes the legal and social challenges arising from differences in nationality, culture, customs, and legal systems, which may lead to family disputes and ultimately to the dissolution of the marital relationship. Accordingly, the research aims to examine the legal framework governing the dissolution of mixed marriages in Algerian law and to assess the adequacy of the applicable legal rules in resolving related disputes and safeguarding the rights of all parties involved.

Keywords: Mixed Marriage, Algerian Law, Conflict of Laws, Family, Divorce, Judicial Jurisdiction..

Introduction :

Marriage is one of the most important social and legal bonds that a person establishes during their lifetime. Owing to its significance and sanctity, it is distinguished from other types of contracts because of the legal and social consequences it entails. These consequences extend beyond the spouses themselves to encompass the family established through marriage and ultimately influence the fabric of society as a whole. For this reason, Islamic law and positive (statutory) laws have devoted considerable attention to regulating marriage and establishing its legal framework, considering it the fundamental pillar for building the family and society and ensuring social and legal stability.

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With the remarkable advancement of technology, which has greatly enhanced modern means of communication, transportation, and the ease of movement across international borders, it has become inevitable that marital relationships would increasingly transcend national boundaries. This has led to the emergence of the phenomenon of mixed or international marriage, whereby spouses belong to different nationalities and are subject to different legal systems. Such marriages give rise to a complex network of legal relationships that requires precise regulation to determine the applicable law and judicial jurisdiction while ensuring the protection of the rights and obligations of all parties involved.

However, mixed marital relationships may face significant legal and social challenges due to differences in cultures, civilizations, customs, and traditions brought by each spouse. These differences may lead to ongoing conflicts, misunderstandings, and difficulties in defining and enforcing the legal rights and obligations of the parties to the relationship. Consequently, family disputes may arise, ultimately resulting in separation or the dissolution of the marital bond, particularly in the absence of a comprehensive and coherent legal framework.

In the absence of a comprehensive legal framework that takes into account the specific characteristics of mixed marriages, these disputes may become major causes of family disintegration and have a negative impact on the stability of society.

This study, entitled **"The Dissolution of the Marital Bond in Algerian Law,"** falls within the broader examination of the impact of the dissolution of mixed marriages on the marital relationship under Algerian law. It is based on the following research question:

What are the legal effects resulting from the dissolution of a mixed marriage?

How has the Algerian legislator addressed this issue in light of the differences between national legal systems?

To answer this research question, the study is divided into two main chapters:

The first chapter examines the regulation of the dissolution of the marital relationship and the conflict-of-laws issues arising from mixed marriages. **The second chapter** focuses on the legal effects resulting from divorce in mixed marriages, including the consequences of the dissolution of the marital bond.

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First chapter : Dissolution of the marital bond

The methods of terminating a marital bond vary from one law to another, so the dissolution of marriage is one of the sensitive issues in most laws, especially in family law Complex solutions due to their consequences, while determining the competent law regulating mixed marriage, which raises issues of conflict between the various laws. Accordingly, in this section, we will discuss the dissolution of mixed marriage in Algerian law in the first requirement, then learn about the law governing the dissolution of mixed marriage in the second requirement.

The first requirement: the dissolution of mixed marriage

By dissolution of the relationship, we mean a solution to the marriage complex and the severance of the relationship between the spouses, and it takes place in multiple ways, including divorce, which is one of the most prominent forms of dissolution, and the rulings on divorce differ according to the cultures and heavenly religions that have established controls that protect the rights of both parties and ensure the stability of the family and society.Accordingly, the Algerian legislator requires that we address the definition of the dissolution of mixed marriage in (the first section) and then the forms of dissolution of the marital bond.

First section: Definition of the dissolution of mixed marriage

Mixed Marriage is considered a family bond and one of the most open areas for conflict of laws. It is one of the most important personal status issues in general. This is due to the social, religious, and moral considerations on which it is based, and given the different views of societies regarding it. Although some countries consider marriage an eternal bond, it may end or dissolve in any way.

According to the Algerian legislator, marriage is defined in Article 4 of the Family Code, which states the following: "Marriage is a consensual contract concluded between a man and a woman in the legal manner. Its objectives include forming a family based on affection, mercy, cooperation, protecting spouses, and preserving lineages[1]

It is noted that the legislator defined marriage in terms of purpose, both original and dependent, so he expressed the dependent purpose by saying its purpose, and he

expressed the original purpose of marriage by saying: preserving lineages, and sequential purpose is the solution to listening by saying: protecting the spouses.[2]

Mixed marriage is a marriage concluded between two people of different nationalities or countries, or each of them belongs to a different religion or culture. This marriage is considered a means of acquiring nationality, as is the case in a marriage between a patriot and a foreigner, or a national marriage to a foreigner.[3] an example of this is the marriage of an Algerian Muslim to an English Christian, or the marriage of an Algerian Muslim to a French Muslim.

As for the dissolution of mixed marriage, it is the termination of the marital relationship between a man and a woman by will, divorce, or non-administrative means, which is death, according to what is stated in Article 47 of the Algerian Family Code [4] Which states: "The marital bond shall be dissolved by divorce or death" [6] this type of marriage is considered one of the most complex legal issues, as the laws governing divorce in mixed marriages differ from those regulating divorce in traditional marriages.

In mixed marriages, the national laws of each party overlap with those of the married woman, which makes the issue of divorce à complex legal issue. Some countries adopt strict laws that prevent divorce or set complex conditions for its completion, while other countries adopt more flexible legislation.[5]

The second requirement: Algerian law has jurisdiction over the dissolution of the marital bond

The dissolution of marriage, like other matters related to personal status, raises controversy regarding the choice of the applicable law when the spouses belong to a different nationality, as the Algerian legislator subjected the dissolution of marriage to the law of the husband's nationality at the time of filing the lawsuit, without distinguishing between divorce, Judicial divorce, Khula ad physical separation.

This is in application of the attribution officer contained in Article 12/2 AD. Algerian, where the following was stated: "The national law to which the husband belongs at the time of filing the lawsuit applies to the dissolution of marriage and physical separation.[6]

However, he excluded a special case from this, where Algerian law alone applies if one of the spouses, whether husband or wife, holds Algerian nationality at the time of the marriage. Based on this requirement, we will discuss subjecting the dissolution of mixed marriage to the law of the husband's nationality in (Section One) and subjecting it to the rule of Algerian law.

Section One: Subjecting the dissolution of mixed marriage to the husband's nationality law

The issue of the dissolution of marriage is considered one of the most important issues that raise the problem of conflict between laws, as it requires determining the law that must be applied when divorce occurs, and the Algerian legislator has been interested in establishing specific and clear attribution controls, subjecting the application of national law to the husband in the dissolution of the marital bond.

First: Applying the husband's national law

Laws have differed to determine the law applicable to cases of dissolution of marriage. According to Article 12/2, as we mentioned above, the Algerian legislator has subjected the dissolution of this marriage to one law, which is the law of the husband's nationality alone, without regard to the law of the wife's nationality. This is understood to avoid ambiguity and different interpretations; He mentioned the legal or time period relied upon, which is the time of filing the lawsuit to decide on the application of the law, in order to avoid the problem of dynamic conflict that arises when changing nationality after marriage or from children continuing the marital relationship.

Second section : The exception to the general rule for the dissolution of a marital bond

The exception provided for in Article 13 was intended to expand the scope of application of Algerian law alone to divorce, annulment, khul' and physical separation whenever one of the spouses was Algerian at the time of the marriage, regardless of the nationality of the husband at the time of the dissolution of the marriage, i.e. the nationality they had at the time of concluding the marriage, even if the latter changed after that.

First : Applying Algerian law when mixed marriage is dissolved

The general rule in Algerian law and in Arab laws stipulates that the issue of dissolution of marriage is subject to the law of the husband's nationality when filing the lawsuit. We have pointed out an important exception that stipulates the application of national law, which is Algerian law, if one of the spouses, whether the husband or wife, holds Algerian nationality at the time of the marriage,[7] This is what is stated in Article 13 of the Algerian Civil Code: "Algerian law alone applies in the cases stipulated in Articles 11 and 12 if one of the spouses is Algerian at the time of the marriage."[8]

It becomes clear to us that this exception only benefits the wife who holds Algerian nationality at the time of the marriage. However, if the husband is the one who holds Algerian nationality at the time of filing the divorce suit, Algerian law is applied in accordance with the general rule stipulated in Article 12/2 of the Civil Code.

It has been previously noted that implementing the exception stipulated in Article 13 is unable to protect and guarantee the Algerian husband who acquired Algerian nationality after marriage, as caring for the latter's rights will only be achieved by using the idea of public order.

For example, in the case of an Algerian Muslim marrying à foreign woman in writing, according to his personal law the marriage is considered valid. The ruling on the validity of this marriage, as stipulated by Algerian law, can only be made by way of exception to the idea of public order, because the ruling to end the marital bond in this case is considered a violation of the provisions of Islamic Sharia, which considers the right of the Muslim husband to marry in writing Therefore, if the purpose of this exception is to protect the Muslim national party, Adopting the idea of public order achieves the same result, and adopting this exception may lead to strange results.

We find that Algerian law applies to the dissolution of marriage between a foreigner and an Algerian who has lost his Algerian nationality after his marriage, while it does not apply to the dissolution of marriage between two foreigners who have both acquired Algerian nationality after their marriage. Adopting the idea of

public order achieves the same result, and adopting this exception may lead to strange results.

We find that Algerian law applies to the dissolution of marriage between a foreigner and an Algerian who has lost his Algerian nationality after his marriage, while it does not apply to the dissolution of marriage between two foreigners who have both acquired Algerian nationality after their marriage.

The termination of marriage is subject to the law of the husband's nationality at the time the lawsuit is filed, which may not have been known to the spouses at the time of the meeting. The husband may change his nationality after marriage, and the wife may be surprised by the application of a law that allows him to dissolve the marital bond through divorce, while the law of his nationality at the time of marriage did not allow it[9],In my opinion, I think it would have been more appropriate for the Algerian legislator to submit to dissolution of marriage is based on the law of the husband's nationality at the time of marriage, as it is the law that was known and expected from the spouses at the time the relationship was established.

On February 17, 1998, the Supreme Court ruled to overturn a decision issued by the Bir Mourad Rais Court on July 14, 1996 in a case whose facts are summarized as follows: A marriage was registered in the municipality of Marseille between an Algerian wife who also later acquired Italian citizenship for an Italian husband Following a dispute between them, the wife filed a physical separation lawsuit before the Italian judiciary, and the husband filed a divorce lawsuit before the Algerian judiciary (Bir Mourad Rais Court)which issued a ruling ordering divorce and adjudication of the consequences resulting from their marriage, as well as an order to register the divorce in the municipality of Marseille, where the marriage took place.[10]

The Supreme Court's decision stated that the court had erred in applying Italian law when the judge applied the subject matter pursuant to Article 12 of the Code, while Article 13 of the same law stipulates that the nationality of one of the Algerian spouses shall be applied when concluding the marriage in the cases stipulated in Articles 11 and 12 of the Civil Code if one of the spouses is Algerian,indeed, the wife's nationality was not stripped from her after she obtained Italian nationality as well, according to what was indicated by the Supreme Court's decision, as long as her Algerian nationality was original. The court's decision also confirmed, albeit

indirectly, the application of another principle related to conflicts between laws contained in Article 22/2 of the Civil Code, which is the application of Algerian law alone, as the person holds two nationalities at the same time, including Algerian nationality.

Thus, we find that the exception contained in Article 13, Algerian Civil, included all issues related to personal status, that is, the legislator found the law that applies to the marriage system, whether related to the conditions for the validity of marriage and the resulting effects, including personal or financial,Algerian law is the sole authority to terminate the marital bond if the dispute was brought before an Algerian judge. We have previously explained that the application of Article 13 remains limited to bringing the dispute before an Algerian judge.

It is not permissible for a foreign court to apply it as long as a single-party solution is decided. In addition, its ruling becomes useless and effective in the event that the Algerian party changes its nationality-therefore, in my view, it is considered a legal rule of the judge's law. If a dispute is presented to a foreign judicial authority, there is no doubt that it will rule according to the general rules of the judge's law, and its application becomes completely unlikely because it violates its requirements.[11]

Finally, it can be said in the context of studying the jurisdiction of the Judge Law that among the reasons for its original application without confrontation by any foreign law. We also touched upon in the context of our study of this research that the reasons that made the legislator assign sole jurisdiction to the Judge Law in consideration of social considerations, which it seeks to provide protection for patriots, especially those related to the essence of the national social system, were based on the national interest and the interest of the national party in those disputes Private International.

Chapter two: Effects of marital bond dissolution

Termination of the marital relationship results in multiple legal effects related to whether it is specific to the relationship between the two parties or to the relationship between their children, such as alimony for the wife or children and custody, its conditions and duration. These effects are considered direct results of divorce, which aims to protect the interests of all parties after the end of the marital bond, noting that

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it does not pose any problem in searching for the applicable law if the divorce is between an Algerian couple, as the judge applies the law Algerian is both on the subject or the procedures. However, if the nationality of one or both parties differs, this opens the way for the existence of the issue of conflict between laws, which requires specifying the law concerned with the effects of marriage, such as alimony, custody, etc., in accordance with the rules of conflict of laws in force. Therefore, in this section, we will study the effects related to the personal relationship between the two parties (the first requirement), then the effects related to the relationship between the children in (the second requirement).

The first requirement: Effects specific to the personal relationship of the two parties

Marriage is considered a family bond, and one of the most important personal relationships between spouses, which is the basic foundation upon which marriage is built in Algerian law. This is due to the social, religious and moral considerations on which it is based and which result in mutual rights and duties between them that regulate marital life and ensure balance and stability in the family, based on mutual respect between spouses, loyalty and cooperation for the benefit of the family and the care of the children,each law pays special attention to regulating the effects of this relationship after the dissolution of the marriage, in order to preserve the rights of both parties. Therefore, it is necessary to study the law governing alimony (Section One). Then we will address the issue of compensation for a divorced woman in the event of an arbitrary divorce in (Section Two).

First section: : The law governing alimony

It is the duty of the divorced person to commit to spending on his divorced woman after the end of the marital relationship, in accordance with the cases stipulated in Algerian law,[12] to understand the subject, we must define the definition of alimony (first), then the law that must be applied to it (second).

First: Definition of alimony

The Algerian legislator did not define alimony, but merely mentioned its contents in Article 78 of the Algerian Family Code, which stipulates that alimony includes food, clothing, treatment, housing or housing rent, and what is considered essential.[13]

Accordingly, the Algerian legislator did not define alimony directly, but rather left its definition to the relevant jurisprudence, and was content to enumerate its contents in 78 of the aforementioned Family Code.

Where he mentioned examples that include alimony. The Algerian legislator adopted the doctrine of the majority, especially the doctrine of the Malikis, especially alimony, which stipulates the obligation of marital alimony based on the wife entering into a valid marriage. If the marriage is completed with the completion of the entry, alimony is obligatory. However, if the entry is not completed and the wife remains in her parents' home without the entry being completed, alimony is not obligatory on the husband,17 according to the text of Article 74 of the same law: The wife's maintenance is obligatory on her husband by entering into it or inviting her to him with evidence, taking into account Articles 17, 11 and 71 of this law.[14]

It is clear from this article that: The husband must bear the expenses of his wife as a general principle, whenever she is brought into the marital home or at least whenever she is invited to it, because the wife did not enter or refused to enter despite being invited to it, so her right to alimony from her husband will be forfeited and she no longer has the right to request alimony as long as she is not brought into it or as long as she was invited to enter and refused, so the husband no longer has to bear the wife's expenses.[15]

Evidence of the legitimacy of maintenance from the Book indicates the husband's obligation to provide for his wife, in accordance with the Almighty's saying:"Mothers may breastfeed their children for two complete years, for whoever wishes to complete the nursing period. And upon the father of the child is their provision and clothing according to what is customary and reasonable. No soul is burdened beyond its capacity. No mother should be harmed because of her child, nor should a father be harmed because of his child. And upon the heir is the same obligation.[16] If they both decide, by mutual consent and consultation, to wean the child earlier, then there is no blame upon them. And if you wish to have your children nursed by à wet nurse, there is no blame upon you, provided that you pay what you have agreed upon in a fair and customary manner. And be mindful of Allah, and know that Allah sees what you do."[17]

Second: The law governing alimony

What is meant by alimony is the copy due to the wife, not marital alimony, but rather alimony that follows divorce and concerns the wife. This is the case with alimony in the waiting period for divorce, or what is called alimony for the divorced wife.[21]

The Algerian legislator has not specified a special attribution officer for alimony, which describes it as one of the effects of marriage. Therefore, alimony is subject to the law of the husband's nationality at the time the lawsuit is filed. Accordingly, the law of the husband's nationality at the time the lawsuit is filed applies to the alimony of the divorced woman, which the wife is entitled to after the divorce, considering it one of the legal effects resulting from the end of the marital relationship,[22] regarding waiting period expenses, the Algerian legislator has not specified any basis for attributing them in the Algerian Civil Code. Therefore, waiting period expenses are considered an effect of the dissolution of marriage, and are therefore subject to the law governing the effects, to which the provisions of Articles 12/2 and 13 of the Algerian Civil Code apply.

As for temporary alimony, it is what the judge rules on in urgent circumstances as a temporary measure pending the decision of the original lawsuit related to divorce. It is a right for the wife over her husband so that he can guarantee her and her children the minimum standard of living when she is in a dispute that exposes her husband before the judiciary. The law that governs it is the judge's law for considerations related to the security of the judge's state,because it is considered in some legal systems to be public order, another aspect of jurisprudence called for subjecting temporary procedures to the law governing the dissolution of marriage, and they criticized the judiciary for subjecting all temporary procedures to the judge's law, such that they must be subjected to the law that applies to the dissolution of marriage, and there is a jurisprudence and judicial trend in French law,[23] alimony is generally considered within the jurisdiction of the judge's law, as it is one of the rules of the police and civil security.

Section two: The law applicable to the issue of compensation for a divorced woman when an arbitrary divorce occurs

If the divorce was arbitrary by unilateral will and caused harm to the wife, then it results in financial compensation for the wife who was harmed by this divorce,

because arbitrariness in using the right to divorce is considered, according to the most correct opinion, only an error of default and requires compensation according to the rules of responsibility for the personal act, based on the legal rule that there is no harm or damages.

A decision issued by the Supreme Court on April 7, 1986 stated that: "It is one of the legal principles that a wife who has been arbitrarily divorced has the right to alimony for the waiting period, alimony for negligence, and alimony for the waiting period, in addition to the compensation that may be granted to her as a result of the arbitrary divorce. When issuing the ruling, the nature of the amounts ruled in favor of the divorced woman must be clarified and the framework within which these amounts fall must be determined, and any ruling that violates this principle: Such as granting him a total amount without details, which requires overturning the decision."[18]

Some personal status legislation has adopted the principle of compensation for damages resulting from divorce without a legitimate reason. These laws require divorce to be compensated arbitrarily. This compensation is a right for every divorced woman whose husband has been proven to have abused her.

The solution adopted in Article 12, paragraph 2, may lead to a conflict between the law governing tort liability and the law governing divorce in the event that the divorce is arbitrary, with regard to the compensation due to the injured spouse, according to Article 52 of the Algerian Family Code, because arbitrariness in the use of the right to divorce is considered, according to the opinion referred to in jurisprudence, a tort error that requires compensation according to the rules of liability for the personal act and the rule of attribution that governs it, which is Article 20 From the Algerian Civil Code.[25]

The rules of domestic law of the country in which the harmful act occurred apply to it, or accordingly the judge's law applies to it.

The second requirement: Effects related to the personal status of both parties after termination of the marital bond

The effects are the relationship between the two parties is a fundamental aspect of regulating family relations in accordance with Algerian law: Among these effects, the issue of the waiting period imposed on the divorced woman for a certain period

arises, the aim of which is to protect and prevent mixing of lineages while ensuring legal rights, and the permissibly of the wife regaining her maiden name, or keeping her ex-husband's name and regaining it after divorce, which reflects the importance of preserving the woman's personal and social identity after breaking the marital bond.

Through this, we will discuss in the first section the law related to the waiting period, then the law that must be applied to the wife's name in the second section.

First section: The law related to the waiting period "Iddah"

The waiting period is considered one of the most important concepts in family law. It is a period of time during which the wife counts and is determined in accordance with Islamic law and the law after the termination of marriage, with the aim of achieving important legal and social goals, as previously said.Therefore, we will discuss its definition and the foundations of its legitimacy first, and then the law that applies to it second.

First: Definition of Iddah waiting period

Technically, it is the period during which marriage is forbidden after the death of her husband or her divorce from him. It is not permissible for her to marry someone else until the period specified by the Noble Lawgiver ends, in accordance with the Almighty's saying:"Divorced women shall wait by themselves for three menstrual cycles. It is not lawful for them to conceal what Allah has created in their wombs, if they believe in Allah and the Last Day. And their husbands have the better right to take them back during that period, if they desire reconciliation. And the women have rights similar to the obligations upon them, according to what is fair and customary,But the men have a degree (of responsibility or authority) over them. And Allah is Almighty, All-Wise."

Second: The law that applies to the waiting period (Iddah)

The Algerian legislator has regulated the number and considered it to be one of the effects of marriage in Articles 58 to 61 of the Family Code in the next chapter entitled ‹Effects of Divorce›, and as long as the waiting period is considered one of the effects of the expiration of the marriage, it is subject to the personal law of the spouses in accordance with Article Ten of the Civil Code, which stipulates the

following ‹The civil status of persons and their eligibility shall be applied to the law of the country to which they belong by their nationality›,it is clear that personal status, including the provisions of the waiting period, is subject to the law of the nationality of the person concerned.

The law governing divorce also applies to it, in accordance with Article 12/2 of the Algerian Civil Code.According to what the Algerian legislator did in subjecting the waiting period to personal law, the waiting period has a concept specific to Muslim countries and is not known in non-Islamic laws, which makes the application of personal law to the divorced woman the most appropriate to ensure respect for her cultural and religious privacy.[26]

Due to the lack of arrangement of any effects on it in non-Islamic laws, whether it relates to physical separation, divorce, or divorce.The purpose of the waiting period is to ensure women's innocence and prevent mixing of lineages while preserving rights related to lineage and inheritance, which is not known by law in non-Muslim regimes.It is one of the Islamic legal rulings imposed by Islamic law on divorced or widowed women.

Section two: The law that applies to the wife's name

Mixed marriage and divorce are among the most important family ties that give way to conflict of laws when marriage is dissolved and physical separation occurs. The question arises: Does the wife keep her husband's name, or must she get her family name back?

Some legislation stipulates that her husband's name is the opposite of what is done in Islamic countries, which allow her to keep her original name. In return, some countries grant spouses the freedom to choose a common family name that combines their two names together.[19]

While the majority of jurists believe that it is necessary for a woman to regain her original name immediately after the dissolution of marriage and physical separation, due to the end of the marital relationship and the expiration of its personal effects.[20]

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The second requirement: Personal effects specific to children

The effects of divorce on the relationship between parents and their children are among the most important issues that the judge must consider when considering a divorce suit, as children are among the most affected by divorce cases, especially in mixed marriages, where the psychological, social and legal effects are more complex due to the difference in cultural and legal systems between the parents.

These effects overlap with the challenges posed by the discrepancy between the laws governing the issue of custody. Thus, we will address the issue of custody as an effect of divorce (in the first section), and then the conflict of laws regarding the attribution of custody (in the second section).

Section One: Custody as an effect of divorce.

First: Differences in legislation regarding the issue of custody

Since custody is the preservation of the child, his upbringing and care, and the management of his affairs, including food, clothing, and education; that is, the complete care of the person who has the right to custody, Article 62 of the Algerian Family Law stipulates that custody is the care and education of the child, his upbringing according to his father's religion, and ensuring his protection and preservation of health and morals, the legislator added a requirement to describe the custodian,"provided that the custodian is qualified to carry out this responsibility."This is the text defining custody.

Article 54 of the Tunisian Personal Status Code defines it as keeping the child in his home and raising him.[21] article 97 of the Moroccan Personal Status Code also defines it as protecting the child from what may harm him as much as possible and raising and treating him. As for Egyptian law, Personal Status Law No. 44 of 1979, as amended, did not include an explicit definition of the concept of custody, but rather left the judiciary with the task of dealing with it, based on the jurisprudence sources that dealt with the issue in detail.

The same applies to Jordanian law, which is limited to determining the conditions of custody, the order of who has the right to it, its duration and lapse, and the custody fee in accordance with Articles 154 to 1666, without addressing the

definition of custody in Law No. 61 of 1946, relying on judicial jurisprudence and opinions in this regard.[22]

Section Two: Conflict of laws regarding the assignment of custody

Custody is considered one of the complex issues to which the Algerian legislator has not allocated a special attribution rule when establishing conflict of laws rules, which has led to differences in jurisprudence and judicial rulings in determining the legal nature of custody and the law applicable to it, in the absence of a clear attribution rule.

First: The law applicable to custody

For nursery,There are many scientific problems, after the separation and separation of spouses, often in two countries, which raises the problem of conflict in laws, and the unilateral law in question is rarely a position to carry the conflict disputes often arise over who has the right to them, the right to visit and transport the child to the second party's country, the guarantee of his return, as well as the right to spend on him.He considered that Algerian law, as previously mentioned, is devoid of any other Arab laws, with the exception of Tunisian law them.[23]

From a special text, and because it is considered an effect of dissolution, it is subject to the law governing the dissolution of marriage (Article 12/2 and Article 13 Civil). [24]It is a stable solution in comparative law, but since children often hold dual nationalities, the Algerian judiciary is settled that the right to custody belongs to the father if the mother resides in a foreign country.

A decision was issued by the Personal Status Chamber of the Supreme Court on January 12, 1989, upholding a final decision authorizing the implementation of a foreign ruling that granted custody to a mother residing abroad. The court justified its decision on the basis that granting custody to the mother in a current case would change the beliefs of the child in custody and distance him from his religion and the customs of his people, in addition to the fact that the father has the right to supervision, and the child in custody abroad is considered deprived of this right.[25]

To address the problem of conflict of laws in custody matters before the Algerian judiciary. Algeria has concluded several bilateral agreements with other

countries, the most important of which is the Algerian-French agreement on children of mixed spouses. In Algeria on June 31, 1988,this agreement aims to regulate the status of children resulting from mixed marriage in the event of dissolution of the marital bond, and to settle disputes related to the right of custody and the right of visitation between the two parents.Taking into account the interest of the child as a top priority, but in the event of a marriage between Algerians and foreigners whose country does not have a bilateral agreement with Algeria regulating matters of custody and mixed marriage, reference shall be made to the general rules stipulated in the Algerian Civil Code and the provisions of jurisprudence.

Conclusion :

The dissolution of the marital bond in mixed marriage is considered one of the most prominent issues. Areas of legal conflict are more complex due to the differences in legal systems in determining the attribution officer that governs the issue of marriage and divorce and the resulting effects of alimony ,Idaa ,and custody. ..Etc.

With the presence of the foreign element in these disputes, it is necessary to find clear and necessary rules that regulate how the laws are applied and to determine the law competent to rule the dispute in order to ensure the achievement of justice and the protection of the rights of the parties concerned. The Algerian legislator has established an integrated system to regulate the dissolution of marriage, based primarily on the rule of attribution that subjects divorce and physical separation to the law of the husband's nationality and the cessation of filing a lawsuit in accordance with Article 12,the second paragraph of the Algerian Civil Code also made an exception in Article 13 of the same law, in which Algerian law alone applies in the cases stipulated in articles 11-12 if one of the spouses is Algerian at the time of marriage,except with regard to the eligibility of the marriage.

According to this system, it reflects the keenness of the Algerian legislator to ensure balance between the right of the individual,the right of the nation protect national law ,protect its national sovereignty ,and respect the right of the foreign element, and his efforts to resolve disputes related to the dissolution of mixed marriage in a legal manner. He also sought to develop legislation in line with international agreements, especially after amending the 2005 law,Equal rights with

men, such as the issue of alimony, which falls on the husband within the framework of meeting the necessary needs of the wife and children, taking into account the circumstances of each of them and his financial capabilities, in addition to compensation for arbitrary divorce, which constitutes one of the rights that protect the wife from unjust divorce and gives her compensation that compensates her for the damage caused to her as a result.

In addition to that, the importance of the equipment imposed by legislation as a preventive measure aimed at preserving the rights of the parties is highlighted.In addition, the importance of determining the law governing the wife's name after divorce arises in her right to keep her ex-husband's name or return to her original name.

It has become clear to us through the research of the dissolution of the marital bond in mixed marriage and its resulting effects, as the latter includes the organization of various issues related to divorce and determines the attribution officer who governs it due to the size of the problems it raises and most notably the problem of custody of children resulting from mixed marriage in order to renew the applicable law,and addressing the problems and situations that prevent achieving the interest of the child in custody. Therefore, existing agreements must be updated, and new agreements must be concluded to address shortcomings in their legal and practical aspects.

The necessity of serving the child's interests in all relevant legislation, including agreements that elevate domestic legislation and establish additional protection for the family resulting from mixed marriage.Emphasizing in a clear and explicit text the mandatory rules of public order that may not be amended, to protect public order, public morals, and Islamic values in the conflict of laws and attribution controls.

The margins:

[1] Algerian Family Code issued by Order 02/05 of 02/27/2005, amended and supplemented by No. 15 dated February 27, 2005.
[2] Saadi Ali, Marriage and its Disruption in Algerian Family Law, a Comparative Study, PhD Thesis in Private Law, Faculty of Law, University of Algiers 1, Algeria, 2017/2018, p. 120.

[3] Belayour Abdel Karim, Lectures on the Nationality Law in light of the new amendments contained in Order 05/01 issued on February 27, 2005 relating to the Nationality Law, corrected, revised and added version, published by the Faculty of Law, Ben Aknoun, Algeria, academic year 2004/2005, p. 86.
[4] Youssef Dalanda, Legal Consultations in Family Issues, Dar Houma, 2013, p. 34 6- Algerian Family Code promulgated by Order 02/05 of 02/27/2005 amended and supplemented by QJR No. 11 dated February 27, 2005, Article 47.
[5] Taliba Marwan, The Limit of Mixed Marriage between Rights and Duties, Dar Al Nour, Lebanon, 2020, p. 104
[6] Khandouli Fatima Zahra, The Dissolution of the Marital Bond in Private International Law, a thesis for a master's degree in private international law, Abu Bakr Belkaid University, Tlemcen, Faculty of Law and Political Science, 2010/2011, p. 53
[7] Algerian Civil Code A - Article 13 of the Algerian Civil Code
[8] Hisham Ali Sadiq, Conflict of Laws, 2004 edition/University Publications House, Alexandria, p. 29
[9] Since the marriage of foreigners before the Algerian judiciary is a matter within the jurisdiction of Algerian law to prove it.
[10] File No. 170080 Decision dated 04/17/1998, Divorce Case B (K.F.) v. (F.J.R.). Judicial Journal for the year 2000, Issue 1, page 167.Quoted from Zarouti Tayeb, The Jurisprudence of the Algerian Judiciary in the Field of Private International Law, commentary thereon, pp. 119-120.
[11] Zarouti Tayeb, Algerian Private International Law, Part One (Conflict of Laws: A Comparative Study), Second Edition, 2008, Al-Ruwaisiya Press, Algeria, p. 174
[12] Article 78 Law No. 05-09 of July 1984 amending and supplementing the Family Code issued and supplemented by Order No. 05/02 of February 27, 2005
[13] The alimony of Wife, children, relatives, and breastfeeding, Al-Ijtihad District for Social and Human Sciences, issued by Ammar Thaliji University in Laghouat, No. 12, dated p. 105.
[14] Abdelaziz Saad, Algerian Family Law in its New guise, Dar Al Amal, Algeria, 2010, p. 142, from his own words
[15] Surah Al-Baqarah, verse 233
[16] Alioush Qarbou Kamal, The Law of Family Relations in Light of Marital Bonds and Physical Separation in the Law
[17] Salah al-Din Jamal al-Din, History of Laws, second edition in Egypt, 1933, p. 223
[18] Salah El-Din Gamal El-Din, The Law of International Private Relations (A Study in Light of Islamic Law), 2006 edition, Dar Al-Fikr Al-Jami'i, Alexandria, p. 355
[19] Arrab Belkacem, Private International Law, Part One, Conflict of Laws, Dar Houma, Algeria, p. 273
[20] Janduli Fatima al-Zahra, op. cit., pp. 31-32
[21] Haddad Kenza and Bresh Amira, antiquities..... On divorce in mixed marriage, a memorandum to obtain a master's degree in private law..... Family Law, Faculty of Law and Political Science, University of Algiers 1, 20246 2025
[22] Bakhta Zaidoune . previous citation, p. 54
[23] See the position of the Moroccan legislator regarding Article 82 of Code 48 relating to Professor Zerrougui Tayeb, previous reference, p. 194.
[24] Tunisian law subjects custody to Article 50 of the International Law Journal of 1998, which states: "Custody is subject to the law that dissolved the spiritual bond, or to the child's personal law or the law of his seat."
[25] Decision of Personal Status at the Supreme Court, June 2, 1992, No. 84519, published in the Judicial Journal, 1993, No. 1, p. 91.