

Ministry of Higher Education and Scientific Research



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Faculty of law



**The Family Law Laboratory organizes
a second international forum on:**

**Legal drafting of personal
status provisions**



On Wednesday, May 8 th, 2024

المنتدى الثاني لمنتدى قانون الأسرة

The problem of the international forum

A prelude to the problem:

Legal texts, or what is called codification in certain circumstances, are necessary to regulate relations in societies. It is a form of organizational progress that is affected by its development and mutation, and legal drafting is the legislator's tool for expressing all of that.

Therefore, legal drafting is affected by the transformation of societies' concepts and perceptions, which change according to circumstances and situations, and it is also a humanitarian work.

It is a humanitarian work comes to its shortcomings, so it is necessary to review and revise this wording in order to keep pace with developments and fill gaps, in an attempt to reach.

A hope that achieves legal progress compatible with the development of individuals and societies. It is worth noting that the interest of legal legislators in reviewing the formulation of texts has become necessary for the good organization of society in all fields, and the field of personal status is one of the most important because of its close connection to the private life of individuals and the privacy of these conditions and their connection to the religious aspect in general. The law-maker in countries that take religion as a source of personal status laws has tried to Specifically, adopting the provisions of divine law and working to formulate them into legal texts, and this matter was important in preserving the most important component in these countries. However, some problems were raised in the extent to which the legal text expresses the requirements of the legislative ruling and the extent of its suitability to developments in reality.

The legal term is being developed with new developments in the provisions that it expresses: its creator seeks to make it appropriate to the assumptions and outlooks to which it responds. This is what is necessary, when achieved, to qualify the competent authorities and bodies dealing with the text in interpretation and explanation, as well as the citizen who is addressed by the legal text that contains a term for his right. He developed after he composed another term that expresses. The same legal phenomenon, and this may cause disturbance in dealing with the text through misapplication and adherence to its meaning.

Text of the problem:

What results is a clear imbalance that affects the development of the reformer to abandon the old term and replace it with something else, which may not accurately indicate the meanings chosen by the law-maker, which is the intended meaning and the connoted meaning. Here, interpretations and explanations arise that are different from the intent of the positive legislator, who replaced al- Adeed. Among the drafters of the Arab personal status laws, for example, is the jurisprudential term "Nikah"

with the term " zawadj (marriage)", and the exact meaning is not the same, as they differ in form and content in many aspects, especially in generality and specificity.

Abandoning the term sometimes leads some authors of legal texts inventing terminological alternatives that affect the understanding of its meaning and its confusion when it is used outside the framework regulating it in personal status texts, such as the term virgin and "Thaïb" being abandoned in the Algerian family law, for example, and replacing them with two different terms, namely minor and adult, even though they do not convey the precise meaning. What is required, as well as the word "Tanzil" instead of the obligatory will in the wording of Articles 169 to 172 of the Algerian Family Code.

Aside from the language of the original text in which the legal rules are written and the language of the translation, there is a discrepancy between the terms used what is intended and therefore applied, and this is evidenced by many cases in family and personal status laws that abound with many examples indicating that law- making bodies fall into similar lapses, including the text of Article 169 of the Algerian Family Code, in which the word "grandchildren" differs between Arabic and French.

Given the special nature of marriage and the provisions associated with it, the terms used in it, even if they have broader uses, are affected by it and do not indicate the same narrow legal meanings as is the case in the general rules: the promise to marry is not the promise to contract stipulated in the general rules of law. Civil law, and the invalidation of the marriage contract is linked to the element of knowledge and sometimes produces some effects, unlike invalidation in the general rules, where it does not produce an effect and is comparable to nothingness. Likewise, the annulment of the marriage contract entails annulment in the general rules. Deficiencies in the field of marriage are also affected by obstacles to marriage, in contrast to deficiencies in general rules .

All of this is considered and can't be denied or disputed.

As a term evolves, the previous term is dropped and replaced with a new one that might not precisely reflect the meanings selected by the legislator, leading to a discrepancy between the intended meaning and the meaning of the sentences. This gives rise to varying interpretations and justifications of the legislator's intent. For example, many Arab personal status law drafters have substituted the term "marriage" for the term "Nikah," despite the fact that the two have distinct meanings and differ in terms of writing and content and many other aspects, such as the term's generality and specificity.

The abandonment of the term sometimes leads some lawmakers to conceive alternative terminology that alters the understanding of its meaning when are used outside their regulated contexts in texts of personal status

For example, the Algerian family code dropped the terms "Bikr" and "Thayib" and replaced them with the terms "minor" and "adult," although they do not give the exact required meaning. Furthermore, in the articles 961 to 971 of the Algerian Family Code the term "Tanzil" which means inheritance by substitution was used instead of the term "El Wassiya El Wadjiba" or the Mandatory Testament .

Beyond the language of the original text, which codifies the legal rules and the language of translation, the divergence between the terminology used prevents a better understanding of what is intended and therefore applied, as demonstrated by numerous family law cases and personal status that abound with examples of similar failures in which the legislators fall .

For example, Article 961 of the Algerian Family Code, in which the word "grandchildren" differs between Arabic and French version in view of the particular nature of marriage and related provisions, The terminology used, although it has broader uses, is influenced by it and does not reflect the same narrow legal meanings found in the general rules. the promise of marriage is not the promise to contract in the Civil Code, In addition, the nullity in the marriage contract is linked to the element of knowledge and produces certain effects occasionally contrary to the nullity in the general rules ", which produces no effect, as well as the dissolution of a marriage that differs from contract dissolution in the general rules.

The inadequacy of marriage is also affected by the obstacles to marriage contrary to the general rules, all this is taken into consideration and cannot be denied or debatable.

The legislator often corrects errors in texts with obvious shortcomings by retrospective texts, which may be insufficient to correct all the errors found or contain their own errors. This is also a fundamental disadvantage in the drafting of legal texts, particularly those related to personal status given the sensitivity of this field.

It happens that the legislator omits a word in the text, causing confusion about its meaning, resulting a modification of the text, prior to that, doctrine must intervene by adjusting the gap , as well as the judiciary in interpreting the legal provision as it should be and not as it appears in the flawed text.

Some texts may also have grammatical or spelling errors that affect their value and the robustness of their language. This is a formal matter, and if it doesn't have a significant impact on the legal value of the text, it's a defect that needs to be fixed and not left unchanged.

Many are the disadvantages of drafting in personal status laws, which are among the most essential and widespread in legal texts . This demonstrates the drafter's poor legislative efficiency :

Incompatibility: The difference between converging provisions in a single legal text where the legal wording is in contradiction, so it does not serve the purpose of legalization and impedes the proper application of the text and the realization of justice. For example, two articles in the same legal text may be in contradiction, so they cannot be combined even if their meanings are clearly formulated, such as articles 102 and 91 of Jordan's Personal Status Code.

Ambiguity: Where can the text be understood only by the legislator's intervention in supplemental interpretative texts, clarifying the legislative intent, such as article 7 of the Personal Status Code.

Vacancy: visible does not require evidence; It becomes obvious during the initial review of the laws, such as the legislator in some countries omits many subsidiary and original provisions in organizing the marriage contract in terms of its convening, termination, and effects, as is the case in the Syrian and Kuwaiti Personal Status Laws, where the elements of the marriage contract are not explicitly stipulated.

Poor drafting control: It is one of the most important forms of drafting errors in personal status, When a lawmaker is unable to use the term that conveys the intended meaning, which affects the legislative provision in understanding and application, This includes the use of certain completely inappropriate terms to refer to provisions of the Islamic sharia, such as corruption, which Algerian legislators insist on maintaining despite the amendment of the law and the fact that it has never been applied by the judiciary.

awarding the judge varying powers to rule between the parties by assessing the arbitrariness between the spouses or the percentage of damage or other similar provisions, is tainted by the absence of the supposed accuracy in the drafting , which must characterize the legal texts in terms of the method of their edition and the choice of precise terms that define the provisions, which affecting the good understanding and application of the law.

The violation of the order and the prohibition due in the legal texts reduces their binding character , thus the text loses its legal essence ,the rule that is not issued binding cannot be regarded as a law to apply.

Although the absence of binding is permissible in many provisions because of the particular nature of the contract, such as non-financial obligations between spouses, but this is not valid in all provisions, most legal provisions must be expressed in the form of a command to do an act or its prohibition.

The legislator's dealing with the principles of family law with permissibility and prevention does not serve its purpose if it is not accompanied by a penalty, imposing the conclusion of the civil contract of marriage cannot be legally adopted as a necessary condition for application as long as the legislator does not follow its violation with a penalty , many spouses do not conclude civil contracts only later than the date of the actual marriage, this is a result of the absence of the binding penalty to respect the legal provision formulated in the form of optional advice to take or to leave ,not as a binding rule.

Referring to the provisions of the Islamic sharia with its broad meaning often leads to problems of interpretation that cause Non-uniformity of the judicial work. This is one of the issues that most of the comparative Arab laws have worked to resolve , some of them have identified the adopted jurisprudence, others have identified a set of references , with the order in which they should be followed.

The author of the law in the field of personal status may fall into a fundamental problem related to the drafting which is the output of provisions that require flexible drafting in the form of peremptory texts or vice versa, that affects the good application of legal rules where the judge is restricted in what he is supposed to have discretionary power, and this is what affects the authority of the judge to rule rights to their owners, while he may find himself free to dispose when he is supposed to be restricted, This may allow a lot of practices that deviate from the legislative purpose of the text and its original provision.

The inclusion of a set of procedural provisions in substantive codifications is one of the issues that must be avoided, especially in states where there are procedural texts for personal status disputes, so it is not suitable for the law-maker not to differentiate between substantive and procedural provisions and to formulate them in one codification, resulting the disproportion of the terms used with the particular nature of each type of provisions mentioned.

The adoption of Islamic jurisprudence as a source without the assistance of those competent to bring it out in appropriate wording raises many issues that can be avoided by simply using the necessary competencies to codify the provisions of the text and to formulate its language

And because the matter was not in most of the Arab legal texts to regulate personal status as it should, most of the lawmakers fell into the same mistake through which they deviated from what they wanted to express, one of the most obvious is that they expressed the “Bikr” as a minor and the “Thaib” as an adult, both have not the same meaning.

Objectives of the International Forum

The international forum on “Legal drafting of personal status provisions” intends to achieve numerous general and special goals, the most important of which are:

First objective :

Dissemination of technical work in the drafting of legal texts of a special character as they relate to Islamic jurisprudence, in order to illustrate its theoretical and practical significance and to guide researchers and specialists to conduct prospective researches.

Second objective :

to collect competencies related to the topic to benefit from diverse perspectives and multiple opinions in it .

Third objective :

Attempt to avoid terminological restriction in the meanings of words to bring closer the comprehension of experts in the various jurisprudence from which the authors of personal status texts quote opinions and jurisprudence

Fourth objective :

To give due importance to each element of legal drafting , which reflects the genuine value of its pillars, free of faults and gaps.

Fifth objective :

Highlighting challenges emerging from incorrect legal drafting and its consequences on individuals' rights, and demonstrating means of temporarily resolving them, particularly through research and jurisprudence.

Axes of the International Forum

In response to the problem presented in the preamble of the document, and an attempt to cover this huge topic in all its aspects, the following themes are highlighted:

The first axis:

The specificities of legal drafting in the field of personal status, in view of the Lawmakers' reference to legislative jurisprudence

The second axis:

The impact of legal and other factors beyond legal drafting on the legal term in the field of personal status, and its departure from the meaning of the term compared to its linguistic reality.

The third axis:

The various drafting defects contained in the Similar and different personal status Arab and other laws.

The fourth axis:

The jurisprudence and judiciary Methods and mechanisms enabling the avoidance of drafting flaws in personal status texts.

The fifth axis:

Proposed solutions to control legal drafting in personal status field, ensuring that texts in this area are free of defects.

Important links:

Download the participation data form in the international forum:

<http://lien.univ-alger.dz/LDF/wp-content/uploads/2024/02/pdf-استمارة-بيانات-المشاركة-في-الملتقى-الدولي.pdf>

Download the Family Research Journal article template in three languages (Arabic, French, English):

[docx-قالب-المجلة-عربي/http://lien.univ-alger.dz/LDF/wp-content/uploads/2024/02](http://lien.univ-alger.dz/LDF/wp-content/uploads/2024/02/docx-قالب-المجلة-عربي.docx)

<http://lien.univ-alger.dz/LDF/wp-content/uploads/2024/02/Gabarit-de-la-revue.docx>

http://lien.univ-alger.dz/LDF/wp-content/uploads/2024/02/template.ang_.docx

International Forum email: semi.l.d.f@gmail.com

Important dates:

Deadline for announcing the forum: Monday, Shaban 9, 1445, corresponding to February 19, 2024.

Deadline for receiving entries: Monday, Ramadan 22, 1445, corresponding to April 1, 2024.

Deadline for responding to interventions: Monday, Shawwal 20, 1445, corresponding to April 29, 2024.

Deadline for the forum: Wednesday, Shawwal 29, 1445, corresponding to May 8, 2024.

Link to access the forum room: <https://meet.google.com/xhb-mxbb-upw>

Forum timing: The official start begins at 14:00 and ends at 22:00 pm, Algeria time.