

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Islamic Emirate of Afghanistan**

**Law on Legal Procedure of Courts**

English Version

Print Date: (May -2014)

Publication of Court of Cassation

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at [www.arlo.online](http://www.arlo.online).

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

## **Table of Contents**

General Provisions .....	3
The Acquitted and the Convicted .....	8
The Subject-matter of the Claim .....	13
The Action of a Respondent to Change the Decision of the Court .....	22
The Manner of Judgement.....	30
Contradiction .....	35
Three-tiered Courts.....	36
1 – The Primary Court .....	37
2 – The Appellate Court .....	38
3 – Court of Cassation .....	45
Duties of the Huquq Department .....	46
Duties of the Criminal Department .....	47

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**In the Name of Allah, the Most Merciful, the Most  
Compassionate!**

**Courts' Proceedings Law  
General Provisions**

**Article 01:**

The basic elements of the judiciary that constitute a court are as follows:

- a) Judge: refers to the individual responsible for rendering a decision.
- b) Acquitted: describes a party for whom a judgment has been delivered in their favor.
- c) Convicted: identifies the individual against whom a judgment has been rendered.
- d) Subject matter of the claim: represents the central issue addressed in the judgment.
- e) Judgment: constitutes the formal decision made by a judge.
- f) Manner of Judgment: encompasses the process and approach through which a ruling is issued.

**Article 02:**

Sharia Ruler (Judge) is a person appointed by the Supreme Leader (Amir al-Momenin) or his deputy based on his competencies and qualification to settle and decide claims arising between people in accordance with Sharia regulations.

**Article 03:**

The judge shall have a comprehensive knowledge of provisions of jurisprudence, particularly the Hanafi jurisprudence, and shall be competent and have knowledge of the resolution of cases and enforcement of provisions and regulations.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Article 04:**

The judge shall be aware of people's customs and traditions and be able to differentiate between the circumstances of the people.

**Comment:**

The judge shall be obliged to have full knowledge of the principles of the country, particularly the principles related to judicial affairs.

**Article 05:**

Judgement of a minor, an insane person, an imbecile, a deaf person, or a blind person is not permissible.

**Comment:**

A deaf in one ear and a blind in one eye shall be exempted from the provisions of the above article.

**Article 06:**

It shall be necessary for the judge to be intelligent, upright, reliable, and firm.

**Article 07:**

The judge shall strongly abstain from any act, gestures, deeds, or words of a mature injurious to the court's dignity or causes slander and distrust.

**Article 08:**

The judge shall be obliged to always observe complete impartiality and equality towards both parties in everything relating to the trial of the claim.

**Article 09:**

The judge shall not hear a case relating to one of his ascendants or descendants or his wife, his partner, a private employee, and a person who lives at the expense of the judge.

**Article 10:**

A judge may not delay his judicial affairs without any cause.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Comment:**

If the judge causes a delay in the judgment after having the means to judge, he shall legally be entitled to dismissal in addition to Taziri punishment. (2)

**Article 11:**

The judge's judgment may accept limitation, specification, and division in time, place, issue, and event.

**Comment:**

If the judge's judgment is bound to a certain court or a certain place, he may not judge outside of it.

**Article 12:**

The judge may not delegate someone else the jurisdiction and power to judge without the regulations and authorization of the Emirate.

**Article 13:**

The judge must issue a judgement (verdict), and a Mufti must issue a *fatwa*<sup>1</sup> (notifying and explaining a decision and advising).

**Article 14:**

The precedence of a Sharia claim shall be the condition for the validity of a judgment in favor of individual rights.

**Article 15:**

A claim and its validity shall not be required in public rights; rather, the witness is considered as a plaintiff, and the plaintiff is considered as a witness therein.

**Article 16:**

If a deceased person has not appointed an executor for his/her minors, or a minor is both the plaintiff or defendant and does not have an executor, the

---

<sup>1</sup> A non-binding legal opinion in Islam, issued by an Islamic Jurist.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

judge has the authority to appoint an executor for them and act per the articles contained in the executorship manual.

**Article 17:**

If the deceased person does not have an heir and a person files a debt claim against him/her, the judge may choose a legal representative based on his legal jurisdiction and decide the claim.

**Article 18:**

A judge may not instruct a plaintiff, defendant, or witness during a case.

**Article 19:**

A judge may not act against the Hanafi School of Thought or based on weak issues; otherwise, it may lead to revoking his decision.

**Comment:**

Indeed, the judge shall refer to the highest judicial authority when necessary.

**Article 20:**

A judge may not validate the words of a dismissed judge, even if the other person shall be available before him as a witness.

**Comment:**

The issues related to the deposit and benefits of the endowment shall be exempted from the provisions of the above article.

**Article 21:**

The judge may prevent the local mufti and religious scholars who teach people how to violate the rights of God and the public.

**Article 22:**

The judgment is a ruling that shall be issued by the Sharia Ruler (the judge) with special words regarding the matter that the requirement for its facts and truth shall be proved by the judge, or it is that the judge forbids the

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

plaintiff from a dispute with special words, the judge's decision shall be delivered with such words:

“I have decided that you ..... in the matter of ..... are obliged and blamed” and stipulates his judgment that the subject matter shall be submitted, or “I have judged that you must not interfere with the defendant concerning the subject matter of the case.”

The first judgement is binding or obligatory, and the second judgement is called the judgment of dismissal.

**Article 23:**

As the judgement may be limited, specified, and examined, it also accepts the exceptions of some events and cases.

**Article 24:**

The judgement and its dismissal may be suspended.

**Article 25:**

The judicial verdict shall be limited to the defendant.

**Comment:**

Parentage, marriage, and endowment shall be exempted from its provisions.

**Article 26:**

The judgement in the claim of entitlement shall be exceeded from the defendant to the person whose ownership has been used.

**Article 27:**

The judicial decision issued against some heirs shall actually be a judgment against all the heirs.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Article 28:**

A judicial decision that shall be in favor of one of the heirs, such as a debt of a deceased person which shall be proven on a person, shall be for all the heirs.

**Article 29:**

If worldly enmity such as defamation, battery, and murder occurs between the plaintiff or the defendant and the judge, it hinders the judgement, and the judge shall not decide the case in such circumstances.

**Article 30:**

The judgment shall be evident and binding, yet not definitive; the subject matter of the dispute must remain a consistent concern, and the judge shall articulate it.

**Article 31:**

It is not permissible to issue a verdict in favor of or against an absent person without any consideration of legal interest.

**Article 32:**

The judgement of the *Hanafi* judge in accordance with Imam Yusuf or Imam Mohammad (May God's mercy be upon them), who are both the students of Imam Abu Hanifa (May God's mercy be upon him), shall not be considered against the *Hanafi* school of thought.

## **The Acquitted and the Convicted**

**Article 33:**

**Acquitted:** Refers to an individual for whom a judgment has been rendered in their material or moral favor, regardless of whether they are a plaintiff or defendant.



**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Article 34:**

Convicted: Denotes a person against whom a judgment has been issued to establish or uphold the rights of another party, irrespective of their role as a plaintiff or defendant.

**Article 35:**

An individual whose admission is legally valid against the plaintiff may assume the role of a defendant if contested; in such cases, the defendant will be the possessor in the claim involving an object.

**Article 36:**

The acquitted and the convicted may be differentiated before the courts in the primary court, but sometimes the plaintiff becomes the defendant, and the defendant becomes the plaintiff, and even this inversion sometimes returns to its original state.

**Article 37:**

In the resolution of cases, the acquitted and the convicted themselves or their legal representative, executor, guardian, or custodian may appear before the judge.

**Article 38:**

A minor, insane, interdicted, absentee, incapable (legally incompetent), etc., may not exactly become a legal party to anyone.

**Article 39:**

As the presence of both parties shall be a condition for the establishment of a judicial session and the validity of the verdict, the defendant shall be the person who may possess and use the plaintiff's property and express his/her possession as ownership.

**Comment:**

The possession of a depositee, borrower, etc. shall be excepted from a legal claim.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Article 40:**

If a person claims ownership of the property which has been purchased and it must be ascertained if the purchaser has taken delivery of such property from the seller, the purchaser shall be the defendant, and there is no need for the seller to be present at the trial. If it is in the possession of the seller, then it shall be mandatory for both the purchaser and the seller to be present at the trial of the case.

**Article 41:**

If a claim of deposit or loan, lease, or mortgage is filed against someone, it shall be mandatory for the depositor, borrower, lessor, or mortgagee to be present at the trial of the case with the depositee, loaner, lessee, mortgager, and each of whom shall be considered as a legal party.

**Article 42:**

If something is deposited, given as a loan, leased, and mortgaged to someone and another person usurps it; each of the depositor, borrower, lessee, and mortgagee may raise a claim against the usurper, and it shall not be mandatory for the owner to be present at the trial. But if its owner raises the claim and the subject matter of the claim is in the possession of the mentioned persons as above, it shall be mandatory for all of them to be present at the trial of the case.

**Article 43:**

The depositor (the person who keeps something as a deposit) may not become the defendant of the purchaser.

**Article 44:**

The depositor may not become the defendant for the creditor of the depositee.

**Article 45:**

The creditor for the depositee may not receive his/her debt from the money that the depositor has kept as a deposit.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Article 46:**

The debtor of the debtor may not be considered as the defendant of the first creditor.

**Article 47:**

The creditor of a deceased person may not claim against the debtor of the deceased person in the existence of his/her heirs.

**Article 48:**

The second purchaser may not become the defendant for the seller of the first purchaser to ask for the sale price, but the seller may claim against the first purchaser.

**Article 49:**

Other than the partnership in inheritance, one of the partners may not be entitled to raise a claim instead of others.

**Comment:**

If someone claims ownership of joint property other than inheritance, and a judgement is issued in favor of him/her after it is proven. The judgement shall only be limited to his/her (the defendant's) share and may not extend to the shares of other partners.

**Article 50:**

If the subject matter of the case is considered as public rights, one of the partners may be considered the plaintiff, and the same person's claim shall be decided.

**Comment:**

If the inhabitants of a village are more than a hundred in number, a certain number of them shall be sufficient to be present at the case proceeding in cases of joint things that may benefit them all, such as a river or a grazing ground.

**Article 51:**

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at [www.arlo.online](http://www.arlo.online).

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

The proof of lineage, in different events, may be the following five persons; the heir, the executor, the person to whom the will is made, the creditor, and the debtor of the deceased person.

**Article 52:**

If a minor is the plaintiff or the defendant, it is sufficient that his/her executor and guardian shall be present, and it shall not be necessary for the minor to be present at the trial.

**Article 53:**

In the case relating to a married woman, it shall be mandatory for her husband to be present before the judge.

**Article 54:**

In the case of an adult married woman in which her father's marriage is cited, it shall not be necessary for her father to be present at the trial.

**Article 55:**

In a case where two persons claim marriage to one woman, and the woman confesses marriage to one and denies to the other, the above-mentioned two persons shall be considered as the plaintiff and the defendant.

**Article 56:**

In a case where two persons claim against one object purchased from a person, and the owner of the object confesses to one and denies the other, the above-mentioned two persons shall be considered as the plaintiff and the defendant.

**Article 57:**

However, the trial of the plaintiff and the defendant shall legally be held in public; the nature of the judgement may not be revealed before it is pronounced.

**Article 58:**

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

Since the presence of both the plaintiff and the defendant shall be the condition for the validity of the judgement, if a person claims against another and the defendant confesses the claim and leaves the court before the judgement is pronounced, or the defendant leaves the court after the testimony of the witnesses and before the inquiry as to the credibility of the witness, the judge may proceed in both cases and pronounce the judgement considering the defendant as present.

**Article 59:**

In a case relating to the inheritance of a deceased person, if a person claims against one of the heirs, and such heir becomes present before the court as the claim is raised and the legal evidence is produced, but he/she leaves the court before the judgement is pronounced, and another heir who has not been present during the proceedings and appears at the court; the judge may, while he does not defend, issue his judgement against him.

**Article 60:**

If the defendant, while defending the claim, states that he has requested the plaintiff to sell or lease or gift, or deposit the subject matter to him after the case or the defendant has proposed the subject-matter woman for marriage, it may be considered as an admission in favor of the plaintiff.

**Article 61:**

During the proceedings of the court, the act to demand dividing the subject-matter is the admission that the subject-matter shall be shared among them.

### **The Subject-matter of the Claim**

**Article 62:**

The subject-matter of the claim shall be divided into four categories:

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

- (1) **Divine Rights** (Public Rights) are those whose act or omission to act shall not be exclusive to one or more persons, its loss and damage shall be common, and/or its outcome shall be considered common or relevant to the public interest.
- (2) **Pure Human Rights** are like judgment in the property and etc. which shall be related to one or more persons.
- (3) **Joint Human and Divine Rights** where the divine right prevails, such as the *Hud* of defamation and the *Hud* of theft.
- (4) **Joint Divine and Human Rights** where human right prevails, such as *Qisas*, and punishments related to human rights.

**Article 63:**

The condition for the validity of the claim is that the subject-matter shall be known and specified.

**Comment:**

The type and amount of the subject-matter shall be stated before the judge.

**Article 64:**

The subject matter shall be known by its description, pointing at it, its definition, and its value.

**Comment:**

If the subject matter is present before the session of the court, it may be sufficient that the plaintiff and witnesses just point it out. Or if it is not present before the court, it is obligatory to make it known by mentioning its quality, description, and value thereof.

**Article 65:**

The judge shall obtain information from official authorities and use expert sources to determine its value.

**Article 66:**

The claim for an unknown object may not be heard.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Comment:**

The claim of mortgage, usurpation, will, acquittal, and admission shall be exempted from the provisions of the above article.

**Article 67:**

In cases where it is difficult to summon things before the court, the judge may, in order to validate the claim, send his trusted person to the place where the subject matter of the claim is, and he shall compare the plaintiff's indications with it and make sure that the subject matter is known.

**Article 68:**

In the case of things of different nature, type, and sort, such as the items in a cosmetics shop or retail shop, it may be sufficient to mention their total value of them, even if the price of each item shall not be mentioned separately.

**Article 69:**

In the case of theft, it shall be mandatory to mention the value/price of the stolen property.

**Article 70:**

In the case of a deposit, if its owner has mentioned the way how it shall be returned to him, its place shall be mentioned.

**Article 71:**

In the case of depreciable items, it shall be the condition for the validity of the claim to mention its nature, type, and value.

**Article 72:**

In the case of animals, it shall be the condition for the validity of the claim to mention their muscularity, femininity, and value.

**Article 73:**

The subject matter of the claim must likely be proved; the claim for something that is logically or habitually impossible shall not be heard.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Article 74:**

If the subject matter of the claim is a debt, it shall be necessary to mention the nature, type, description, amount, and reason thereof.

**Article 75:**

In the case of debt on a deceased person, the plaintiff shall mention in his/her claim that the deceased person has died before paying the said debt, and he/she has not received anything of the said debt until his/her death.

**Article 76:**

In the case of debt on a deceased person, his/her inheritance shall be mentioned, and the witnesses shall also be considered in this case in accordance with articles (74 and 75).

**Comment:**

Despite the presence of witnesses, the judge may cautiously ask the plaintiff to swear an oath.

**Article 77:**

The debt cases create partial differences based on the difference in causes; for example, it shall be a condition to mention the place of the delivery in the case of Advance Sale, while it is not necessary to mention the place of delivery in a sale price as well as it shall not be necessary to express its repayment and delivery place in a loan.

**Article 78:**

In a debt case, it shall be explained that the plaintiff lent his/her personal property to the defendant, and the defendant used it personally.

**Article 79:**

In the case of transfer of ownership, it shall be necessary to explain whether the transfer of ownership is with or without want of consideration.

**Article 80:**



**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

In the case of gifting, it shall be necessary to mention the receipt of the giftee.

**Article 81:**

In the cases of contracts such as sale, lease, mortgage and etc., it shall be necessary to mention means of ownership, consent, and desire.

**Article 82:**

In the cases of sale, purchase, lease, and other contracts, the property shall be in the possession of the defendant.

**Article 83:**

To prove a contract, it shall be the condition for the validity of the claim that the plaintiff and the defendant have sound minds and maturity.

**Article 84:**

In the case of clothing such as shirts, etc., it shall be necessary to mention the variety, attribute, brand, and price thereof, as well as explain whether such clothing is for males, females, babies, or adults.

**Article 85:**

In the case of division of inheritance, the plaintiff must differentiate individual division and division by the court and must explain whether this division has taken place based on their consent or the judgment of the court.

**Article 86:**

In cases of watercourse, yard, etc., the plaintiff shall determine whether this is a watercourse for the rain or used water, etc.

**Article 87:**

In the cases of immovable property, its four boundaries shall be mentioned, and it may also be sufficient to mention the three boundaries thereof.

**Article 88:**

In the case of admission, the consent of the confessor shall be the condition for the validity of the case.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Article 89:**

In the case of land and etc., the subject matter of the claim shall be summoned in order to validate the judgment on the property, and the plaintiff shall state that the subject matter is in possession of the defendant without having any legal right on it.

**Article 90:**

In the case of immovable objects, the plaintiff must state that the subject matter is in possession of the defendant, and it shall be necessary to produce witnesses (witnesses on possession) against it; this detail shall be mentioned for the validity of the judgment on property, not for the validity of the case itself.

**Article 91:**

The new possession shall not be valid because it sometimes happens that the plaintiff has possessed the subject matter of the claim for a long time, but the other party takes possession of the subject matter forcibly or trickily and makes himself the defendant, so the judge should identify the plaintiff and the defendant in the primary court and differentiate between the real and the fake possessor.

**Article 92:**

If there is a disagreement between the plaintiff and the defendant in the issue of Article (91), the judge may decide it like other legal issues.

**Article 93:**

If the plaintiff and the defendant have a dispute over the origin of the possession, and each of them considers himself as the possessor while both parties produce witnesses, the judgement shall be issued such that both parties are in equal or joint possession. If neither party is able to produce witnesses, a verdict shall be issued for both in accordance with Sharia to swear an oath and dishonor to swear it.

**Article 94:**

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

In the cases of movable objects, if the plaintiff wants the subject matter to be removed from the defendant's possession by providing compelling reasons, the judge, if necessary, may accept the mentioned complaint and take the subject matter out of the defendant's possession and submit it to a trusted person until the case is finalized.

**Comment:**

In the cases related to fruit trees and marriage, it shall be proceeded as above.

**Article 95:**

In a marriage case, a married woman who is in her husband's house shall not be taken away from her husband until the other party produces the witnesses.

**Article 96:**

In cases related to immovable objects, if there are no witnesses in possession, the judge may, in case of denial, make the defendant swear an oath for his possession based on the demand of the plaintiff. And if the possession of the defendant is proved, the defendant shall then swear another oath in the origin of the subject matter.

**Article 97:**

In cases related to defending the trespass, the plaintiff shall produce his witnesses on possession and demand to defend against the trespass of the defendant; the judge, after the plaintiff proves his possession, shall ask the defendant to produce legal evidence regarding his ownership; otherwise, he shall not trespass the subject matter of the claim.

**Article 98:**

In contracts that have many conditions, such as advance sale, bailment, etc., all its conditions shall be mentioned, but if some of them are mentioned, it shall be sufficient if the plaintiff state at the end that the contract has been

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

fulfilled as valid and legal, it had all the legal conditions, and there is no legal obstacle in this contract.

**Comment:**

In cases related to marriage, it shall be sufficient if the plaintiff states some of the conditions and adds at the end that the marriage contract has validly and legally taken place between the husband and the wife, it has all the legal conditions thereof, and there is no legal obstacle in the mentioned contract.

**Article 99:**

In a murder case, the plaintiff must state that the murderer is obliged and shall clarify that there is no doubt in murder because the murdered person has not ordered to be murdered, it shall be an absolute murder, and his/her heirs did not forgive the murderer, and etc.

**Article 100:**

A marriage contract has two provisions: concluding provision and provision of statement during a dispute; therefore, the conditions that shall be considered during a marriage conclusion, such as the description of the witness and other available conditions, shall also be considered during a dispute like other legal disputes in the presence of the judge.

**Article 101:**

If the plaintiff defines and describes the subject matter, but when the subject matter is summoned before the judicial session, some of its descriptions are contrary to the statement of the plaintiff. If the plaintiff withdraws his/her first claim and raises a claim for what is available, even if it is a new claim, it must be heard. But it may not be heard if the previous claim has not been withdrawn.

**Article 102:**

While mentioning the four boundaries, both the father and grandfather of the owners of the boundaries shall be introduced.

**Comments:**

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at [www.arlo.online](http://www.arlo.online).

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

The well-known persons shall be exempted from the provisions of the above article.

**Article 103:**

If the defendant or the owner of a boundary states that a certain boundary is contrary to the statement of the plaintiff, considering that the mentioned claim shall be subject to null and void, it may not be accepted.

**Article 104:**

If the witness confesses that he/she has incorrectly stated a certain boundary, such boundary shall be proven as incorrect.

**Article 105:**

In a case related to inheritance, heredity succession, splitting of inheritance, and the cause thereof shall be required.

**Article 106:**

In a case related to absolute ownership (without stating the reason), there shall be no difference in whether to state the reason or not; the mentioned claim shall be heard without mentioning the reason for ownership.

**Article 107:**

In a case related to a sale price, it shall not be required to mention four boundaries thereof.

**Article 108:**

Upon claiming or pleading to any official authority, the sale and purchase of land may not be delayed.

**Article 109:**

Similarly, the marriage contract shall not be delayed upon a claim by another person through producing testimony of one competent witness or two semi-competent witnesses before the judge.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

## **The Action of a Respondent to Change the Decision of the Court**

### **Article 110:**

If the respondent claims a conflict between himself and the judge or himself and the son, father, or mother of the judge, after it is confirmed, the mentioned decision must be revoked.

### **Article 111:**

If the respondent objects that the judge has not discovered the circumstances of the witnesses and has legal evidence against their lack of legal capacity, the judgment may be reversed.

### **Article 112:**

If the respondent objects that the judges shall be bound by the Hanafi religion, but the judgment issued by the judge against him/her is in accordance with another religion, his/her objection may be heard after it is confirmed.

### **Article 113:**

In the time period set forth for hearing the cases, if the judge orders not to hear a case within less than that period, the aforementioned order shall be revoked.

### **Article 114:**

If the respondent objects that the judge has violated the government's obligations and decided on something out of his jurisdiction, the aforementioned decision may be revoked.

### **Article 115:**

If the respondent objects to a repeated negation by proving an official court document, it may be heard.

### **Article 116:**

If the respondent objects that the decision has been made without any legal testing of the character of witnesses or the testing has not occurred legally,

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

and in accordance with the relevant manual, the decision may be revoked if it is proven true.

**Article 117:**

If the respondent objects that the legal requirements in a case or testimony or the reply of the defendant have not been observed in the primary or appeal decision, and if it is proven true, the objection may be heard.

**Article 118:**

As all the conditions of testimony shall be considered except the word (I witness) in the open testing of the character of the witness, if the respondent objects that the conditions of testimony in the open testing have not been observed and if confirmed, the decision may be revoked.

**Article 119:**

If the respondent contends that the judgment relied on legal representation and executorship, but the legal representation and executorship underpinning the decision cannot be verified, the said judgment may be subject to revocation.

**Article 120:**

If the respondent objects that his/her admission is not true in the decision or legal court document considering the legal reasons or repeated negation, his objection may be heard.

**Article 121:**

In the reconciliation between parties, if one party objects that the reconciliation is not legitimate or considers the legal court document as a mistake and therefore claims that he/she is not aware of reconciliation, it may be heard if it is proven as true.

**Article 122:**

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

If the respondent has received a legal court document from the same judge or another judge that proves his/her claim but it articulates contrast and inconsistency, the said objection may be heard.

**Article 123:**

An objection or defense which implies proof as a repeated negation may be accepted.

**Article 124:**

If the objector considers the legal court document as a mistake and proves forgery and distortion in it, or its registry is a mistake, or its limits are not applied at all, the objection may be heard.

**Article 125:**

If the respondent objects that neither he/she nor their heirs are the confessors to the legal court document and decision, if this is the case when observing the registry and other satisfying reasons, it may be heard.

**Article 126:**

If the respondent objects with the legal reasons that the judge has not observed the legal capacity of the dispute, the said objection shall be heard.

**Article 127:**

If the objector invokes documents from official or undeniable sources to deny and doubt the decision or legal court document, the objection may be heard.

**Article 128:**

If the respondent objects that the witnesses on possession and/or the right and ownership have not ascribed the property to the owners of the boundaries while mentioning them, and if this is the case in the decision, the said objection may be heard, and the decision may be revoked.

**Article 129:**



**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

If the plaintiff, in his case, has not ascribed the property to the owners of boundaries at the time of stating the boundaries and the respondent objects against it, his/her claim may be heard.

**Article 130:**

If the respondent objects that the judge has not asked him/her to defend against it or challenge it as false after the plaintiff has filed the claim or the witnesses have testified, the objection may be heard.

**Article 131:**

If the plaintiff failed to present any document in the primary court and was unable to give further explanations, but if he presents any document in the appeal, as long as it does not deviate from the original nature of the claim that has been raised in the primary court, it may be accepted as an increase in a number of the reasons.

**Article 132:**

If nothing has been mentioned about receiving the price in the primary court and it has been decided to revoke the sale due to that reason, but it is mentioned in the appeal court, it shall not be considered as a new claim or beyond the decision.

**Article 133:**

If the plaintiff claims for a debt and the judgement is pronounced in such regard, but the defendant claims in the appeal that the debt has been paid or the plaintiff has acquitted it, it shall be accepted. And if the defendant stated that he/she did not receive any debt from the plaintiff or had no business transaction with him but later mentions its payment or acquittal, it may not be accepted.

**Article 134:**

If the defendant did not mention the time lapse in the primary court but raises it in the appellate court while the original subject matter of the

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

claim remains unchanged, the defendant's claim may be accepted as it provides additional grounds for argument.

**Article 135:**

If the customer claims to demand the purchase on behalf of the pre-emptor in the appeal, it must not be considered a new claim.

**Article 136:**

If the respondent objects that the judge has made him liable to the claim of the plaintiff or ordered him to pay the debt of the plaintiff's heir, but the respondent states that he has the receipt or acquittal letter of the plaintiff or his/her testator in this claim, the objection may be heard.

**Article 137:**

Anything that leads to prohibition or invalidation of the judgement of the judge or a claim that may not be heard legally or the principles have not allowed its hearing, but the judge decides against it, and the respondent objects against it, the objection may be heard.

**Article 138:**

If the appellate court recognizes the appeals of the appellant as valid or observes deficiencies in the decision, the appellate court may revoke its decision and refer it back to the primary court or confirms it.

**Article 139:**

In the rights that shall be inherited or things that shall be related to inheritance and shall be taken from the heir, if the testator dies after the decision of the primary or appellate court, the heirs may request for an appeal to the appellate or cassation court and present their objections to its authority.

**Article 140:**

If the respondent objects that the credibility oath has not been given to him/her in the primary decision, the objection may be heard.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Comment:**

In the following six circumstances, the judge must require the plaintiff to swear an oath without being asked, and this oath shall be one of the judicial rights, which is called the credibility oath:

- A. If the pre-emptor's right, after legal proof, persuades the judge to decide the claim, it shall be necessary for the judge to make the pre-emptor swear an oath as he/she has requested pre-emption at the right time and has not destroyed his/her pre-emption rights in any way.
- B. A woman who has the option of puberty and requests the judge to recess her marriage, the judge may not decide rescission of marriage unless he shall make her swear an oath that she demanded to recess her marriage immediately after knowing about her puberty.
- C. If the customer rejects the sold object due to a defect, the judge shall require him to swear an oath whether he/she is not satisfied with the said defect.
- D. If a person is absent and his wife asks for alimony from her husband's property, the judge shall require her to swear an oath whether the husband has left no alimony for her or she has not been divorced by him.
- E. In the case of entitlement, where something is in possession of another person, and the entitled person claims entitlement, if the judge decides the case after it is proved, it shall be necessary for the judge to first require the plaintiff to swear an oath he/she has not sold or donated or gifted the subject matter to anyone.
- F. The judge must require the plaintiff to swear an oath for the debt or right on the deceased person before the judgement whether the subject matter has not been received by him directly or indirectly from the deceased person.

**Comment:**

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at [www.arlo.online](http://www.arlo.online).

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

The credibility oath shall not only be limited to the claim against the deceased person's debt, but it shall also include all the rights related to the inheritance of the deceased person, whether it shall be an object or a debt.

**Article 141:**

If the plaintiff presents his/her case against the defendant in the presence of the judge of the primary or appellate court and asks for his/her rights from the defendant, but he/she, later on withdraws without any legal excuse and does not appear before court which causes anxiety and confusion for the defendant, the aforementioned courts shall be able to legally put an end to the case.

**Article 142:**

It shall be valid to swear an oath or dishonor it before a judge or a judicial session, not other than that. If something happens contrary to it and the objector objects, it may be heard.

**Article 143:**

As witnesses of prescription and the passage of time can take precedence over evidence that is not prescription-based and should not be considered inadmissible if the judge rules otherwise and the opposing party objects, their objection may be heard.

**Comment:**

The courts must act in accordance with the Part and Chapter of the Time Lapse in the Book of Administration of Justice by the Court and the Book of Testimonies of the Journal of Judicial Judgements.

**Comment:**

Generally, in accordance with article (3) of the Principles of Hearing Claims, the period for not hearing the claims shall be fifteen (15) years except for preemption.

**Article 144:**

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

The admission may not be gathered with witnesses in a single case, but the witnesses may be brought against the denier (the defendant).

**Comment:**

The following stances shall be excepted from the provisions of the above article: (legal representation, executorship, proof of debt on the deceased person, and entitlement).

**Article 145:**

If the admission and evidence (witnesses) exist together in any case, the judgment shall be pronounced with the admission, not with testimony except for the exceptional cases, and if something happens contrary to it, the objection of the objector may be heard.

**Comment:**

If a person has a legal claim against someone and the defendant denies it in the first instance, the judge must legally ask the plaintiff to produce witnesses after the validity of the claim. Once the plaintiff presents his/her witnesses, if the defendant confirms the witnesses or confesses the original subject matter to the plaintiff, the judge may decide based on the admission of the defendant, not based on the witnesses.

**Article 146:**

The appellate or cassation court shall not only consider the objections of the objectors, but they shall also consider the said objections as a means of deep consideration and precision in the decision.

**Comment:**

If no objection of the objector has been filed against the decision, but the decision itself has legal defects that may be considered revocable, the superior court may take action considering its defects.

**Article 147:**

The objections that are submitted to the appellate court shall also be considered in the cassation court.

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at [www.arlo.online](http://www.arlo.online).

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Comment:**

The mentioned objections should be sent to the Department of cassation court with the decision for final appeal.

**Article 148:**

In cases where witnesses are required to testify on possession in claims of absolute ownership, title, or similar matters, the intent is to collect fees from both parties and eliminate the possibility of collusion. If the aforementioned witnesses are not fully vetted, it does not cast doubt on the decision and does not warrant the revocation of the judgment.

**Article 149:**

If the two-tiered courts (the primary and appellate courts), in terms of lacking legal conditions of the claim, have decided not to hear the claim after it has ordered the plaintiff three times to rectify his/her claim, but the plaintiff didn't want to rectify it and insisted on his/her wrong claim, even if the decision shall not have any other defects, the respondent may only ask for the appeal to the court of cassation, because he/she had legal conditions and the courts did not hear it. After that, it shall never be possible to object to the rectification of the case against the decisions of both courts.

### **The Manner of Judgement**

**Article 150:**

The required causes for a legal judgment include admission, witnesses, oath, denial, and absolute evidence.

**Comment:**

The details of the required causes for a legal judgement are available in the Administrative Procedure of the Courts.

**Article 151:**

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at [www.arlo.online](http://www.arlo.online).

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

When the parties appear before the judge, the judge shall first give the plaintiff a chance to state his/her claim.

**Article 152:**

If the plaintiff cannot state his/her claim orally, the judge may listen to his/her written claim, but he/she shall read what is written before the judge, and they shall point out this or that when indicating something.

**Article 153:**

If the claim of the plaintiff is written by another person, it shall be necessary for the judge to read it, and the plaintiff must confirm it from time to time, but still, the indication must not be ignored in accordance with the above article.

**Article 154:**

Following the verification of the claim regarding movable property, the validity of the claim and witness testimony on possession of the immovable property, and the legitimacy of the claim and witness testimony on the plaintiff's possession when defending against an objection, the defendant will be asked to address the plaintiff's statements in the aforementioned claim.

**Comment:**

When defending against an objection, the defendant must be prompted to present their evidence; otherwise, they cannot contest the subject matter of the claim.

**Article 155:**

The judge must not let the defendant disturb the plaintiff when claiming or must not let the plaintiff disturb the defendant when giving a reply, but instead, the session of the court must be handled with full calmness, tranquility, and dignity.

**Article 156:**

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at [www.arlo.online](http://www.arlo.online).

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

If the defendant confesses in his/her reply, the judgement shall be pronounced against him/her based on his/her admission legally. But if the defendant denies, the plaintiff shall be called upon to produce the witnesses. If the defendant persists in keeping silent and refuses to answer either in the affirmative or negative, his/her silence shall exactly be considered a denial.

**Article 157:**

If the plaintiff, after the denial of the defendant, proves his/her claim in accordance with Sharia regulations, the judge shall issue his verdict after the defendant's inability to defend and challenge the claim as false and after legally testing the character of witnesses (testing the character of witnesses shall be carried out in accordance with the Test Principles).

**Comment:**

The benefit of defense is to invalidate the claim, and challenging the claim as false is to eliminate the witnesses.

**Article 158:**

If the witnesses may not state their testimonies orally or if it is difficult to state four boundaries due to its increased number, they may produce their testimony in written form but shall read it before the court and shall not miss the chance to indicate.

**Article 159:**

If the plaintiff is unable to prove his/her claim and states that he/she does not have the witnesses but requires the defendant to swear an oath, the judge may notify the defendant to swear an oath at the request of the plaintiff.

**Article 160:**

If the defendant is ready to swear an oath, he/she shall swear it legally or may dishonor it.

**Article 161:**

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at [www.arlo.online](http://www.arlo.online).



**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

If the defendant swears an oath, the judge shall issue a judgment to end up this current case, and if it is persisted that the defendant must swear an oath again and denies it, it must be considered an admission of the defendant, and a judgment shall be issued against him/her.

**Comment:**

If it is denied swearing an oath, the case of *Qisas* shall be exempted from the provisions of the above article.

**Article 162:**

As the plaintiff shall be free in his/her legal claim, the defendant may also defend the claim raised by the plaintiff during his/her answer in any legal defenses.

**Article 163:**

Filing a reply to a defense and more than that shall be valid, as it may be heard before the first judge (the primary court), and it may also be heard before the second judge (the appellate court).

**Comment:**

The persons who are famous for their tricking and deception shall be exempted from the provisions of the above article.

**Article 164:**

The following circumstances shall be excepted from hearing the defense:

- A. While the defendant says that he/she has to defend but does not explain the way of his/her defense.
- B. The defendant states his/her defense, but he/she may say that the witnesses for his/her defense are not present in the city.
- C. The defendant states invalid and non-hearable defense.

**Article 165:**

If the defendant defends in such a way that it may not be accepted by the law or reasoning or his/her current appearance, the judge may ignore his/her defense.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Article 166:**

The judge may not hear the claims that he understands to be untrue and has legal reasons for its unreality.

**Article 167:**

If the defendant states that the subject matter of the claim has been given to him/her to be kept in trust or it is a loan of a certain absent person that has been leased to him or has been given as a mortgage or usurped from that person, and the defendant produces witnesses against it, and the witnesses also introduce the absent person by his/her name and lineage in their testimonies, the said defense may be heard.

**Article 168:**

The defense claim shall require legal conditions as other claims.

**Article 169:**

The defense by a non-defendant may not be heard.

**Comment:**

It is permissible if one of the heirs shall be the defendant and another heir defends the claim of the plaintiff; this heir shall not be considered a non-defendant or a third party.

**Article 170:**

The defense by the defendant shall not be considered as changing the plaintiff's witnesses.

**Article 171:**

The defense before and after the verdict and the defense before and after the testimony may be heard.

**Article 172:**

If the defendant states that the subject matter of the claim has been purchased from the absent person and/or the absent person has given it to him/her as a gift or the plaintiff raises a claim of usurpation or theft against

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

the defendant, and the defendant states that he/she has received it to be kept in trust or leased it, the claim of the plaintiff may not be defended.

**Article 173:**

If the defendant defends properly, the judge may give the required time to produce witnesses.

### **Contradiction**

**Article 174:**

The two statements where one statement contradicts another, and it shall be presented by the plaintiff or the defendant before the judge in a judicial session that invalidates the claim, is called a contradiction.

**Article 175:**

If the contradiction invalidates the claim for the person himself, it may also invalidate the same claim raised by his/her legal representative or executor.

**Article 176:**

As one right may not be taken from two persons subsequently, one right may not be claimed against two persons subsequently with the same cause.

**Article 177:**

As the contradiction by one speaker invalidates a claim, it shall also invalidate a claim stated by two speakers who must legally be considered as one, such as the heir and legator, the lawyer and the client, and the executor and the testator.

**Article 178:**

Anything that may invalidate the claim of the legator invalidates the claim of his/her heir.

**Article 179:**

Contradiction in a concealed situation constitutes forgiveness.

**Comment:**

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at [www.arlo.online](http://www.arlo.online).

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

When a debtor repays their debt to the creditor and subsequently obtains a valid and essential receipt, this type of contradiction is considered forgiveness.

**Article 180:**

If a person files a debt claim against someone, and the defendant states that there is nothing owed by him/her. As the plaintiff produces the witnesses, the defendant, in his/her reply, declares his/her acquittal or its repayment; the second statement of the defendant shall not be considered a contradiction.

**Article 181:**

If a person files a claim of murder against someone, the defendant denies it in his/her reply, but if the plaintiff produces the witnesses and the defendant asks for pardon or acquits after the claim, it must not be considered a contradiction.

**Article 182:**

If a person confesses that the property belongs to someone else, and the judge orders the defendant to return it, later the defendant states that he/she has purchased the said property from the other party, the second statement shall be considered contradictory and may not be heard.

### **Three-tiered Courts**

**Article 183:**

Based on the Islamic principles that the judiciary has the ability to allow, limit, and analyze by place, time, incident, and matters, has established three bodies to solve legal and criminal cases there, i.e., the Primary Court, the Appellate Court, and the Court of Cassation.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

## **1 – The Primary Court**

### **Article 184:**

The primary court may decide a few or many legal and criminal cases in its presence.

### **Article 185:**

As the primary court resolves legal matters in accordance with regulations and the Administrative Procedure of Courts, and the Principles of Hearing Claims, it shall also resolve criminal matters in accordance with legal regulations.

### **Article 186:**

The Primary Court, in accordance with the regulations, has the authority and jurisdiction to determine divine rights, pure human rights, and Ta'aziri punishment.

### **Article 187:**

The legal case shall be submitted by the competent authorities or in accordance with the letter of claim before the primary court.

### **Article 188:**

The Primary court may not be able to accept legal and criminal cases without the plaintiff and the defendant.

### **Article 189:**

If the plaintiff withdraws the claim without any legal excuse, the primary court shall consider it as a renunciation of the claim.

### **Article 190:**

If it is required to ask for information from persons and government-related institutions in legal cases, it may be asked through its relevant authority.

### **Article 191:**

If the primary court needs to summon any persons in legal and criminal cases, it may be requested through their relevant authorities.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

## **2 – The Appellate Court**

### **Article 192:**

An appeal is a complaint or petition that shall be submitted to a higher court (appellate court) against the act of the governing court.

### **Article 193:**

The aforementioned complaints shall consist of the following two types:

- A- Ordinary Complaint
- B- Non-ordinary Complaint

In an ordinary complaint, the decision of the court shall be considered against the principles and rules of Sharia.

In a non-ordinary complaint, not only the complaint of the defendant against the principles and Sharia but other means shall also be considered.

### **Comment:**

Other means are bribery, debauchery, etc., that shall not be related to the decision.

### **Article 194:**

Basic conditions for appeal:

- a) The appeal must be filed within the legal time frame for hearing the appeal.
- b) The primary decision must have the status of a verdict.
- c) The defendant has not explicitly or implicitly indicated satisfaction with the primary decision.
- d) The appellate court must have appellate jurisdiction.
- e) The right to appeal has not been extinguished by a specific document and mutual agreement between both parties.
- f) Both parties have not consented to the final arbitration of the arbitrator in a written order of a specific document.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

- g) The appeal must be initiated by the plaintiff or defendant and/or their substitute, which may include themselves, their heirs, executors, or legal representatives.
- h) The judgment of the primary court has not been satisfied by the defendant.

**Article 195:**

As the appeal may not be raised without submitting a petition, and it shall be required to be within the legal time period; therefore, its submission date is more important, and the following stages may be considered in it:

- a) The appeal must not be valid without the petition of the person who has the right to appeal.
- b) It is necessary that the petition or appeal letter shall be basically submitted to the appellate court.
- c) It is necessary that the petition for appeal must be filed as formal in the appeal court; that is, it must be recorded in the appeal registry and marked with a number by the court registry.

**Article 196:**

It is required that in addition to the introduction of the appellant and his/her opposing party, the description of the verdict, the name of the court, the date the judgment has been notified to the appellant, and the details of the subject matter shall be explained in the appeal letter.

**Article 197:**

It shall be necessary for the appellant to clarify the reason for the appeal and objection.

**Article 198:**

It shall be necessary for the appellant to submit his/her detailed objection sheet with reasons and evidence to the appellate court within (10) days after submitting the appeal letter so that the opposing party shall be summoned on a particular day after the confirmation and acceptance by the court.

**Comment:**

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at [www.arlo.online](http://www.arlo.online).

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

Emergency situations shall be exempted from the provisions of the above article.

**Article 199:**

If the appellant does not observe the provisions of the above articles and Administrative Procedure, and the period for hearing the appeal claims expires, he/she does not have the right to object, and the judgement shall be considered final.

**Article 200:**

If the provisions of the above articles are observed, but the appellant does not appear before the court within the time period for appeal without any legal excuse, the judgement shall be considered final, and he/she does not have the right to object later.

**Article 201:**

After submitting the appeal letter, each of the appellants and the opposing party must be present before the appellate court on a specified date. But if one of them behaves contrary to the above, the appellate court may express its opinion on the request of the other party and proceed in accordance with article (122) of the Administrative Procedure of Courts.

**Article 202:**

The judgment of an appeal must be pronounced in a Sharia-compliant incident and valid claim; otherwise, the said judgment will not be considered a legal judgment but rather an Ifta (a religious order). It is also necessary to address a Sharia claim in the signature of the second judge (appellate judge), who signs the decision of the first judge (judge of the primary court). This claim or lawsuit is referred to as an "incident" by religious scholars.

**Comment:**

If cases from other judges are referred to the appellate court, and there is a valid claim, and its proceedings are decided legally with proper



**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

implementation, it is called "legal enforcement." However, if only the content regarding the manner of the judgment of the first judge is considered and processed as a submission, it is called "judicial attachment."

**Article 203:**

If the appellate court takes or resorts to any action in any matter before the time of exercising its jurisdiction (before the verdict of the primary court), it shall not be valid before the court of cassation; rather, it may be reversed.

**Comment:**

Based on the current situation, it is required to have a general primary court in addition to every appeal to carry out the preliminary steps based on principles when necessary.

**Article 204:**

As the primary court records what the plaintiff states in his/her claim, the appellate court may also decide the same claim that the plaintiff stated in his/her claim and raise a claim for it.

**Article 205:**

If the plaintiff or defendant has stated something conclusive or inconclusive as a claim or defense in the primary court, they may elaborate or limit it legally in the appeal, and the appellate courts will not consider it as out of the subject matter.

**Article 206:**

A person whose case may be decided in the primary court through himself/herself or his/her legal representative, guardian, executor, and custodian, the right to appeal on his/her behalf may also be heard through the above persons.

**Article 207:**

If the respondent, who has been convicted of paying a debt, has asked the acquitted person for a payment respite and does not want to appeal the

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

essence of the matter, it is implicitly satisfied with the judgement of the primary court.

**Article 208:**

It shall be necessary for the appellant to have legal capacity, and a minor, insane, imbecile, and the like may not exercise the right to appeal.

**Article 209:**

It is invalid to have an explicit or implicit consent/satisfaction of a minor, insane, and imbecile or their guardian, executor, legal representative, and custodian unless the person who has the power to satisfy his/her client shall be exempted from the provisions of the above article.

**Article 210:**

If, at the time of appeal, one of the parties does not consider it appealable, it is necessary for the appellate court to first consolidate whether they have the right to appeal or not, and then it should enter the essence of the matter and act accordingly. Otherwise, the court of cassation may revoke the mentioned judgement due to non-observance of the principles.

**Article 211:**

However, the authority to hear claims in the appellate court has been limited by considering the price of the subject matter of the claim; the following claims are excluded and may be appealed:

- a) The claim related to the right of the watercourse and its establishment.
- b) The claim related to the closing of the door and window.
- c) The claim related to the division of joint property.
- d) The right of the preemptor, whether proving preemption or refusing or quitting the claim of preemption, has been decided from the claim.
- e) The claim related to the height of the neighbor's building and the request for protection against its harm.
- f) The claim related to defense against the harm resulting from drainage in the direction of another person's courtyard.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

- g) The claim related to digging a new sub-stream from the common stream.
- h) The claim related to digging a foggaras that leads to harm to another foggaras.

**Comment:**

*Qisas*, continued imprisonment, and the death penalty in accordance with article (2) of the Administrative Procedure of Courts and the claim of the minors that may have become the plaintiff or the defendant and it has been decided against them, shall precede to appellate and cassation courts in accordance with Appendix of Principles of Hearing Claims.

- i) The claim related to the right to water.
- j) The claim related to the right of passage.
- k) The claim related to the passage of time; as it is a legal right, it shall be considered appealable.

**Article 212:**

If the judgement of the primary court may not be appealed, the appellate court does not have the right to hear the claim of the acquitted person in the matter of compensation of loss and etc., because such claims are subject to the main claim and shall be decided together.

**Article 213:**

If there are several respondents and one of them wants to appeal while the mentioned judgment is considered to be separable, those who did not want to appeal may not benefit from the appeal of the person who wanted to appeal.

**Article 214:**

If the primary court decides to divide or not to divide a house, and the mentioned house is shared between three persons. If one of them wants to appeal and the said decision is revoked because it may not be separable, the other two persons may also benefit from it.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Article 215:**

If there is a positive indebted debt owed to the deceased person, it means that the inheritance does not exceed the rights of the creditors, and one of the creditors considers his/her debt to be the priority based on the documentation of the mortgage, and the primary court decides in his/her favor, the heirs do not have the right to appeal in that matter, and if other creditors want to appeal, they shall have the right to exercise it.

**Article 216:**

If a debt claim has been filed against the bailsman, and the primary court issued its verdict in favor of the bailsman, the principal debtor may not benefit from it.

**Comment:**

In the above case, the principal debtor does not have the right to appeal, the acquittal of the bailsman shall not be the acquittal of the principal, but the acquittal of the principal shall be the acquittal of the bailsman.

**Article 217:**

If a person files a debt claim against two persons and one person appears before the court, but the other is absent, the plaintiff claims against the present person, and the primary court decides against the plaintiff, and he refrains from the said claim, the plaintiff shall not have the right to appeal against the absent person.

**Article 218:**

A person, who has become convicted after the verdict of the primary court, submits the subject matter of the claim with his/her own consent to the acquitted person; he/she shall not have the right to appeal.

**Article 219:**

Since the judgement of the appeal court is the final verdict of the courts, its decision becomes final, and it shall be necessary to issue the said decision in front of both parties.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Comment:**

The cases where judgement is legally in absentia shall be exempted from the provisions of the above article.

### **3 – Court of Cassation**

**Article 220:**

The Court of Cassation is divided into three main departments:

- A) The Appeal Department (Correspondence Department for the Cassation Court)
- B) The *Huquq* Department
- C) The Criminal Department

**Article 221:**

Duties of the Appeal Department:

- a) This department deals with the appeal of the appellant to the court of cassation and checks the date of the decision of the appellate court with the date of realization of the decision to the accused person and the date of appeal to the court of cassation, then it expresses its opinion regarding the reasons whether to accept or reject his/her appeal to the court of cassation and refer its opinions with the reasons to the office of the court of cassation.
- b) The matter that is automatically referred to the court of cassation comes first to this department.
- c) It shall consider claims that relate to the time-lapse and non-hearing of claims and shall submit the original file to its office with its brief information after further consideration.
- d) The jurisdiction of the court that has issued the judgement and its lack of jurisdiction.
- e) The rulings that have been decided based on circumstantial evidence and indications shall be paid full attention and shall submit its

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

summary of suggestions with the actual decision to this office after an explanation of the circumstantial evidence.

- f) Referral of claims based on the opinion of the session of the cassation court to the governing or its similar court.
- g) Division and submission of legal and criminal matters to its relevant departments, follow-up on the issues that are postponed, and reporting the results of the department to its authority.

**Article 222:**

The head of the correspondence department shall be responsible for errors in affairs related to correspondence, purpose deviation, and indulgence in showing the reasons.

**Article 223:**

In addition to his duties, the clerk of the session (the head of the correspondence department) shall be responsible for reading the files, decisions, and the result obtained from them.

**Article 224:**

The clerk of the session (the head of the correspondence department) shall be obliged to organize and arrange files and decisions, organize appeals, maintain the right to prioritize and delay and keep the documents safe.

### **Duties of the Huquq Department**

**Article 225:**

The duties of the Huquq department shall include reviewing the legal decisions, submitting the summary of suggestions with the decision of the matter through the clerk of the session (the head of the correspondence department) to the office of the court of cassation, taking the signature of the office in charge on the letter after reconciliation of the matter, and reporting to the relevant authority.

**Comment:**

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at [www.arlo.online](http://www.arlo.online).

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

Emergency situations shall be excluded from the provisions of the above article.

## **Duties of the Criminal Department**

### **Article 226:**

The duties of the criminal department shall include carefully examining the decisions of criminal cases, submitting their summary with the original decision through the clerk of the session (the head of the correspondence department) to the office of cassation court after obtaining information on their legal reasons, and reporting the result of the approval by the office to its relevant authority after signing its letter.

### **Comment:**

Emergency circumstances shall be exempted from the provisions of the above article.

### **Article 227:**

Since the collective board of the Office for the Court of Cassation has joint responsibility, the members of the Office for the Court of Cassation shall dutifully coordinate with the office in finding the legal resources, gathering legal reasons and principled articles, drawing conclusions, and drafting the decision of the matter.

### **Article 228:**

The members of the court of cassation shall be responsible for the inappropriate use of provisions, inaccuracy in legal matters, as well as baseless approval, and proposing unnecessary theory or opinion.

### **Article 229:**

The head of the office of the Court of Cassation shall be responsible for managing and organizing the session, arranging issues, and implementing Islamic law and principles.

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at [www.arlo.online](http://www.arlo.online).

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Article 230**

The head of the cassation court may also consult with other religious scholars in addition to gathering the collective board.

**Article 231:**

If the court of cassation relies on the religious details and articles of the law in its decision, it shall be explicitly mentioned in its approval in accordance with article (277) of the Administrative Procedure of Courts.

**Article 232:**

There shall be no hindrance if the persons request to write the claim, reply, testimony, objection, doubt, and appeal by themselves.

**Article 233:**

If the court of cassation needs to summon a person, it may refer to the executive branch.

**Article 234:**

If the court has ruled on the validity of a sale and there is a condition that nullifies the contract, or if the court has favored the testimony of good health over that of a mortal illness, or given priority to witnesses of past events over current occurrences, or favored witnesses of a decrease over those of an increase, then this issue may be considered by the court of cassation and may result in a referral.

**Article 235:**

In the claim relating to absolute ownership, if the witnesses on possession have not been summoned, the issue may be considered by the court of cassation and may lead to referral.

**Article 236:**

If the documents brought by both parties are neither specifically nor briefly mentioned in the decision and a verdict has been issued accordingly, the issue may be considered by the court of cassation and may lead to referral.



**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Article 237:**

If the character of the obligated witnesses has not been tested, the decision may be considered by the court of cassation and may lead to referral.

**Article 238:**

If the acquitted or the respondent of the appeal dies before the approval/decision of the court of cassation, the right to appeal to the court of cassation shall be transferred to his/her heirs due to the rights that shall be transferred to his/her heirs.

**Article 239:**

The respondent may not appeal to the court of cassation against a third party out of the decision.

**Article 240:**

If the respondent dies after the expiration of the period for an appeal to the cassation court, his/her heirs shall not have the right to appeal to the court of cassation.

**Article 241:**

If the legal conditions of the claim, basic conditions of the witnesses, and other things that must be required for the description of a legal claim, have been found in the appeal decision, even if the objector has not filed an objection, it may be appealed to the court of cassation.

**Article 242:**

If it has been treated contrary to the legal rules in a claim, reply to a claim, testimony, or defense, legally challenging, and at the time of issuing the verdict, the issue may be referred to the cassation court.

**Article 243:**

The cassation court shall possess all the jurisdiction and authority that the appellate court has, with the exception of the general time frame for a claim.

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

**Article 244:**

If there are any differences in the availability and non-availability of the right to appeal or expiration or non-expiration of its period, the cassation court may first remove them and delve into its base.

**Article 245:**

If something is relied on in the incoming entries of the courts that is not true or relied on circumstantial evidence that may not be considered legal evidence or any contradiction is observed, the issue may be appealed to the cassation court and may lead to revoked.

**Article 246:**

As the cassation court shall be responsible for differentiating between the legal reasons of the primary and appellate courts and determining the strength and weakness of the reasons of both parties, it shall be required that the reasons of both parties must be stated explicitly in their decisions and their citation should be based on religious details in order that the cassation court makes a better judgment, and approves, reverses, doubts or refers the decision.

**Article 247:**

As the basis of the cassation court is to solve complaints and process judicial affairs to the principal axis of justice, it is necessary for the office of the cassation court to accept the objections of objectors, whether they are submitted directly or indirectly.

**Article 248:**

The cassation court adds the approval or refusal of the objections of the objectors in its decision to be addressed.

**Article 249:**

The objections, reasons, and documents provided by both parties shall be accepted and doubted article by article in their approval.

**Article 250:**

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at [www.arlo.online](http://www.arlo.online).

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

The heads for both the *Huquq* department and the Criminal department shall also be responsible based on their jurisdictions consecutively.

**Article 251:**

The following are the decisions that may not be appealed to the cassation court:

- a) The judgments that shall be based on explicit admission and acquittal, and the appellant to the cassation court only deny his/her presence to confess and acquit and does not have strong reasons that make the legal court document suspicious or there is no frequent negation on non-appearance and non-admission.
- b) The judgment of the judge that both parties have satisfactorily confessed the decisiveness of the judge.
- c) The parties have made a commitment, and their commitment has been formalized that their right to appeal to the cassation court is invalidated.

**Article 252:**

The fundamental provisions that the cassation court may examine and which may result in revoking a decision include:

- A) Decisions that could have been appealed but were finalized due to the expiration of the time period.
- B) The final decisions of appellate courts.

**Comment:**

It is not necessary to consider whether a decision is final or not; rather, the principle of reality and truth should be upheld, not the court's decision.

**Article 253:**

If the appellate court accepts an appeal and dismisses the other party's reasons due to the lack of legal conditions, the decision may be appealed to the cassation court.

**Article 254:**

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

If the appellate court's decision has various elements, some of which may be deemed appealable while others are considered final, the objection raised based on the claim may be appealed to the cassation court.

**Article 255:**

Except for Article 263 of the Administrative Procedure of Courts, which grants the right to circulate in the third stage, the cassation court may only distinguish between valid and invalid decisions and confirm or refer them. It is not even necessary to write an indictment; writing the decision and recording it may suffice.

**Article 256:**

The cassation court may not write its suggestion and approval with its decision on the back of the decision paper in the legal or criminal cases, but it may be written and consolidated on a special decision of the cassation court.

**Article 257:**

If the plaintiff claims the main debt or one of the subordinate courts decides in their favor or rules on compensation for a loss that the plaintiff has not claimed, or if the plaintiff has raised a claim to receive a loan and the mentioned courts decided on its price, but the plaintiff did not request it, the issue may be appealed to the cassation court and may result in a referral.

**Article 258:**

If the plaintiff and defendant dispute over the possession of land and the court decides in favor of the defendant, this case may be appealed to the court of cassation and may lead to referral.

**Article 259:**

If it has been decided on the increase or decrease in the subject matters of the claim after the principal claim is proved, it may be appealed to the court of cassation and may lead to referral.

**Article 260:**

This document was translated by the International Development Law Organization (IDLO) for the Afghanistan Rule of Law Observatory (ARLO) initiative. To find out more about ARLO, please visit our website at [www.arlo.online](http://www.arlo.online).

**Disclaimer:** This is an unofficial translation of an official document and is not endorsed or approved by any government agency. Every effort has been made to ensure accuracy however, some inaccuracies or differences in wording may exist.

---

If the appellate court has issued a verdict against the plaintiff not to file a claim because they have neither proven the claim nor demanded the defendant take an oath, and it is apparent that the plaintiff has neither been asked to produce witnesses nor been asked to take an oath, etc., the cassation court may thoroughly examine the issue and may lead to referral.