

IRANIAN BAR ASSOCIATION.

LAWE REVIEW

SCIENTIFIC, LEGAL AND CRITICAL

No. 108

21 March - 21 June 1968

Vol. 20

(25) Iranian Civil Code

BOOK Five

Concerning Missing Persons Whose Whereabouts Are Unknown

Article 1011. A missing person whose whereabouts are unknown is a person who has been absent for a comparatively long duration of time and no news whatever have been received from him.

Article 1012. If the Missing person whose whereabouts are unknown has left no advice for the administration of his estate or affairs and there may be no person legally in a position to take charge of his affairs, the court will nominate a trustee for the administration of his estate. Application for the appointment of the trustee will only be accepted from the public prosecutor and the person interested in the matter.

- Article 1013.** The Court can demand from the trustee whom it appoints to produce a guarantor or to produce other security.
- Article 1014.** If one of the heirs of the missing person gives a sufficient guarantee, the Court cannot appoint another trustee and the heir in question will be appointed in that capacity.
- Article 1015.** The duties and responsibilities of the trustee who is to be appointed according to the foregoing articles are those fixed for a guardian (qayyim).
- Article 1016.** If both the death and the date of death of the missing person whose whereabouts are unknown are definitely established, his estate will be distributed among the heirs existing at the time of death although one or several of them may have died subsequent to the date of the missing person.
- Article 1017.** If the death of a missing person is established without possibility of ascertaining the date, the court must determine the date on which the death became unquestionably known and in that case the estate will be distributed among the heirs who existed at that date.
- Article 1018.** The stipulations of the above article will also be observed in the case where a warrant of presumed death of the missing person is issued.
- Article 1019.** The warrant of presumed death of a missing person will be issued in a case where such a duration of time has elapsed from the date of the last news received as to his being alive that such a person would not ordinarily remain alive after that time.
- Article 1020.** The following cases are of those in which a missing person cannot ordinarily be supposed to be alive:
1. when 10 full years have passed from the date of the last news received as to the life of the missing person and at the expiry of the period his age has surpassed 75.
 2. When a person was included in an armed force under any denomination and disappeared during the war and

till three years after the conclusion of peace no news are received from him.

If the war is not terminated by the conclusion of a peace agreement, the period in question must be reckoned as five years from the date of conclusion of the war.

3. When a man engaged in a sea voyage was on board of a ship which was wrecked in that voyage and three full years have passed from the date of wreckage of the ship in question and no news is received from him,

Article 1021. In the case of the last item of the above article if after the expiry of the following periods of item from the date of departure of the ship the latter does not arrive at its destination, or if it has not returned to the port of departure in the case where it has set out without determined destination and there is no news of its existence, the ship in question will be considered as destroyed.

- a. For voyages in the Caspian Sea and inside the Persian Gulf, one year ;
- b. For voyages in the Sea of Omon, the Indian Ocean, the Red Sea, the Mediterranean Sea, the Black Sea and the Sea of Azof, two Years .
- c. For voyages in other seas, three years.

Article 1022. If a person meets the danger of death or disappears in consequence of accidents other than those mentioned in items 2 and 3 of Article 1020 or if he has been in an aeroplane and the latter has disappeared, a warrant of his presumed death will only be issued when five years have passed from the date when he met with the danger of death and during that period no news have been received showing that the man was still alive.

Article 1023. In cases coming under Articles 1021, and 1022, the court can only issue the warrant of presumed death of a missing person when a notice has been published for three consecutive times each with an interval of one month from the other on one of the local papers and one of the commonly read papers of Tehran inviting the persons who may have news of the man to convey their information to the court and when after the expiry of one year from date of the first publication of this notice, the fact that the man is alive is not proved.

Article 1024. If several persons lose their life in an accident, it will be presumed that they have all died in one instant.

The stipulation of this article does not obstruct the enforcement of Article 873 and 874 of Book one of this law.

Article 1025. The heirs of a missing person Those whose whereabouts are unknown can apply to the court, before the issue of the warrant of his presumed death, asking that this estate may be delivered into their possession, provided, firstly, that the missing person has not already appointed a person for the administration of his estate and secondly, that two full years may have passed from the date that the last news from the missing man were received and that during the period it has not been known whether the man is still alive or is dead. In respect of this Articles, the stipulations of Article 1023 concerning the publication of a notice and the notice of one year must categorically be observed.

Article 1026. In the case of the foregoing article, the heirs should give guarantee or sufficient security so that in the event that the missing man returns or that third parties

may have right on the estate they should be responsible for the estate or for the rights of others in it. The guarantees will remain valid until the verdict of presumed death is issued.

Article 1027. After the issue of the verdict of presumed death of the missing person is found, the persons who have taken possession of his estate at the time the missing person is found, either in original property or the equivalent or the income there of.

Article 1028 The trustee who is to be appointed for the administration of the estate of a missing person whose whereabouts are unknown must pay of the property of the missing person the cost of living (nafageh) of the permanent wife or the temporary wife of the missing person whose duration or marriage has not yet expired and to whom the missing person has undertaken to pay the cost of living. He should also pay out of the property of the missing person the cost of living of his children. If any difference arises as to the fixing of this amount of cost of living, the court must determine the amount.

Article 1029. If a man has been for four full years a missing person with unknown whereabouts, his wife can apply for a divorce. The judge will then grant the divorce subject to the stipulations of Article 1028.

Article 1030. If the missing person returns after the occurrence of the divorce and before the expiry of the period of (Eddeh) time during which a divorced wife is debarred from re-marrying according to the Islamic law he has the right to cancel the divorce (ruju) but if the Eddeh period has already, he forfeits the right or ruju.

BOOK 6 ON RELATIONSHIP

Article 1031. Relationship is of two kinds : Relationship by blood and relationship by marriage.

Article 1032. Relationship by blood involves the following order of precedence First class : [father, mother, children and children of children ; Second class; Grandfathers and grandmothers, brothers and sisters and their children; Third class: Paternal uncles, paternal aunts, maternal uncles and maternal aunts and their children.

The degree of relationship by blood in each is determined by the number of generations in that class. For example, in the first class, the relation of the father and the mother to their children comes first and the relationship of children between themselves comes second; in the same way in the second class, the relation of brother and sister with grand father and grandmother comes first and that of the children of brother and sister with grandfather and father comes second. And in the third class, the relation of the uncle and the maternal uncle, and that of the paternal aunt and the maternal aunt come first, and that of their children comes second.

Article 1033. Every person who is in relation by blood to any degree and in any lineage with another person will have the same relation by blood in the same degree and lineage with the husband or wife of that person as the case may be. The father - in - law of aman therefore, constitute his relations of the first degree and the brother and the sister of the husband of a woman constitute her relations by marriage of the second degree.