

JURATORY ORDERS AND LAWS ABOUT ABSENTEE

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***Abstract:** Absentee is a person whom be absent for long time without information regard the order of being alive absentee assumed as alive and we act like alive person about his properties. About materials allocations provided to protect absents properties. If absent man don't discuss about his property and no one don't deal with manage properties, the court will discriminate a person to do so. Most of jurator believes divide absent properties happens when the exact information received about his death or we know he couldn't be alive regard amend 1025 CL and amend 136 ICL said 2 years needed after the last information to grasp properties and before that time no one couldn't grasp anything before the death and couldn't harm the properties and as the death confirmed inherits could do as they want. And if the absent returns properties will get back to him*

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INTRODUCTION

Absent has different meanings and in public people use it as different. For example (someone is absent in meeting) this word has the same meanings in term of law and one common is to be absent in court session.

Although civil law use the same meaning for definition of absent somehow prescribe it as absentee. Civil law define absent: <absentee is a person whom is absent for a long time and there is no information about him (amend 1101 civil law).

The word absent used for public in civil law and its cause to create different interpretation about its combination with other words.

In rights terminology book about absent and absentee we see different

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Definitions

1. Absent: (civil – justice procedures) whom is a far from home and for a long period whether we could give information or not (amend 306 CL, amend 664 HL) if there is no information or we call it absentee and it's called cute absent (amend 1011 CL)
2. Place absent: (fegh-h): absent who is vanished in struggle place and this place based on distance of ghasere salat will calculated.
3. No information absent= (absentee) (Jafari langeroudi, Mohammad Jafar Rights terminology – v4 p2715)

Property actions of absentee

Property actions of absentee is important based on two elements and it's under focus of court:

First: if absentee has property and its necessary. Because if he doesn't have property the property actions will cancel.

Second: the property shouldn't have manager if has a manager no one couldn't interfere in his actions. Absentee may determine a manager for his property also may law do so. For example if absent has executor in this cases as manager property he could do it in absence and no need to court interfere.

So if and absentee left a property and that property hasn't manager this provide a situation for justice about absentee property.

Law provide below rules for absentee actions.

- 1- Protect his property before interfere of attorney and determine honest
- 2- Protect his property before determine honest
- 3- Determine honest for run absent property
- 4- Give property temporary to inherits
- 5- Provide assume death order and full grasp of property for inherits.

Manage absent property before attorney and honest inference

A) Manage property by a contract agent

Its possible property ran by a lawyer or agent. If absent order to do so usually there is nothing wrong with it because person could manage his property directly or indirectly and by selecting an agent

In general amend 1012, 2036 CL, 140 CL said if absent selected a lawyer court won't interfere in his actions and won't determine honest and property wont given to inherits till agent die or unable to manage them (amend 140 CL)

B) Manage absent property by legal agent

If absent person were little or mad and has agent, when absent person is in capable to manage based on amend 1183 CL in whole actions related to properties of person will do by lawyer and manage actions of absent till provide assumed death order us done by agent. Law maker in amend 1217 CL said: manage properties of little and mad and ingrowth people is by agent.

In this terms honest will determine and attorney couldn't interfere. If agent lost merit for any reason or die honest will determine. When little person or mad be absent and someone manage his property after absent person should do his job and manage property of absent person.

PROTECT ABSENT PROPERTY BEFORE DETERMINING HONEST

To protect absent property clearing the absentee between absentee and determine honest by court who should protect absent properties? If public governors do not any action here it may destroy the properties till honest determined. An example of governing of jurator on absent is govern to avoid destroy properties. Because is based on kindness for owner and it's an example of governing moreover its sign of owner government, so in term of protect property, no need to general governing and reason but some other actions like buy and sell is not allowed. Because governing in others property not provided for any expect masooms, expect institution protection created by selling and protecting money. Like when property cause to corruption or face stealing and corruption in these situation governor could do sell and other action as marhoom naraghi said (mosavi khalkhali - Seyed Mohammad Mehdi, governing of jurator in Islam P615).

Regard amend 113 CL (to protect property when honest needed as honest determine the attorney is responsible to protect property) so absent property although grasp by inherits should protect by attorney or should do by a confident people (Emami - Seyed Hassan - civil right - v4 - P226) so attorney himself or his agent should do actions to protect absent properties. For example close them and sell malady materials and pay the price and responsibility or protect absent property, before determining honest is attorney and if harm to property abroad protection of them is by embassy concedes like attorney responsibilities (amend 115 CL and 1229 CL).

Embassy councilors could determine honest to protect property and should send document of property 10 years after determinations to judge department. Honest will provided by order of Tehran judge department (amend 114 CL) it seems meaning of (determination) in amend 114 CL said continuing honest responsibility refers to court decision and if court doesn't determine honest councilors are responsible and are legal to manage absent property (emami seyed Hassan - civil right - v4 - p230).

DETERMINE HONEST TO PROTECT ABSENT PROPERTY

As it's possible to find alive the absent. Law makers to protect his benefits and avoid spare property try to determine a confident person as honest.

Regard amend 1012 CL <if absentee doesn't determine a person to manage property and there is no legal person to do so court determine a person to manage and request of honest by public judge and benefited people is legal by below terms:

First: absentee doesn't determine people to manage property, so if owner make someone responsible we couldn't determine honest

Second: there is no one legally responsible for property, so if absent is little or mad and has executor we couldn't determine honest, because executor responsible to manage the property and no need to others

Honest determination terms

In below terms its necessary determine honest:

- 1- When a property will inherit to a afterbirth when parents die if afterbirth has no executor (amend 103 CL)
- 2- To manage property will refers to public without manager (amend 103 CL)
- 3- To manage absentee property (absent honest) (amend 103 CL and amend 102 CL)
- 4- To protect inherits of dead person
- 5- When a person is really old or sick and couldn't manage his property (disable honest) (amend 104 and 108 CL)
- 6- When a person temporary responsible about others and he is disable to manage those property (1184 CL)
- 7- For lack of honesty of child property (amend 1184 and 1186 CL)
- 8- When the betray of executor will confirm by the other side of deal (amend 79 CL)

Willing court to determine honest

Regard paragraph 15 of amend 4 family support law approved 91/12/1 managing the material actions of absentee is a responsibility for family court situations of court to manage absentee actions are:

- A) A court of city which absentee lives in last (amend 126 CL)
- B) If he hasn't a stay place in Iran the court will be the last place which he lives in (amend 1271 CL)

- C) When absent doesn't live or stay in Iran or his place to live wasn't clear the court will be the place which inherits lives in there (amend 128 CL) and if they live in different places the court will hold in place of first petition
- D) If inherits won't clear in Iran a court in a place which absent has a property there do it (amend 129 CL). No difference between cash or other properties (emami seyed Hassan - civil rights, v4, P225) if there is lots of property in different place the court is acceptable in which could perform (saffi Seyed Hassan - Ghasemzadeh - seyed morteza - civil right of person and mad P640, borikolo - Alireza - Persons and right support - P102)

Honest features

Generally a person could be honest in which has two feature: power & integrity

- A) Meaning of integrity said to be loyal about absent properties and save them at any situation and honest has such meaning too.

Honest should act about property as usual. Amend 612 CL said <honest should property as he said and if nothing mentioned he should do it as usual or else.

He is Bailee. (aminian modares, Mohammad absentee and braves in law supportive view P64).

Most of jurators said like this, for example in sharhe tabsare place, we see (after deal and giving property to honest its vajeb for him to protect it and keep it in a safe place and any property has its own place) (Mohammad _ sharh tabsare alame heli _ v2 _ P41) and Mohaghegh is sharae said: property will protect like a habit as usual people do it (heli abulghasem najm jafar ibn Hassan (mohaghegh heli) shareae eslami fi masael halal and haram _v1_P413).

And shahid sani in sharh lame aldameshghiye said (property should protect said usual people do it in terms of time and place because law maker doesn't clarify it orders. We should get back to usual habits (jebi ameli - zainaldin ibn ali alorzeal bahiye fi sharh almea aldameshghiye - translated by hamid masjed saraee v5 P237 and imam in tahrir alvasile said: its vajeb to honest to protect property as its usual between peoples) (mosavi Khomeini roohallah - Tahrir al vasile translated by alieslami v2 P532) law cancellous said like that (emami sayed Hassan - civil rights v2 P165).

- B) Honest should enough power to protect property of absent because it's his responsibility and he doesn't the adjective he will fire.

Honest word means a person which has adjectives of loyalty and avoid betray. As in human society most are kind the bass said any one could determines honest expect against of it approved (barikloo, Alireza - persons and right supports P102)

Honest should have essential merits regard amend 108 CL < court determine anyone as honest which has essential merits to protect absent property whenever his one of benefited people or the judge. Himself determine that person, regard to laws the responsibilities of honest and executor is the same (regard amend 119 CL) and regard amend 117 CL we see (people whom couldn't be executor determine as honest. Below people shouldn't be executor.

Person below couldn't be honest

- 1- Person whom under governing of executor
- 2- Person whom punished by court cause of doing a crime
Robbery - betray in honest - defraud - graft, defraud honor and children.
- 3- Person which his order of broken doesn't payback
- 4- Person whom are famous for corruption
- 5- Person whom he's family or relevant maybe mad (regard amend 1231 CL)
(safo seyed Hassan - Ghasem zade - sayed Morteza - Civil right of mad P64 - 65) paragraph 1 guaranteed the managing the property and paragraph 2-3-4 guaranteed the adjectives of honesty. And 5 guaranteed avoidance to attack absent rights (barikloo Alieza - people and their support law P102 - 103).

Honest determination priority

Persons have priority are:

- 1- Absent inherits with equal terms have priority than others if they could give guarantee regard to the court (amend 1014 CL)
- 2- In families of absent father, grandfather, mother, child - woman or husband or any other in order has priority and if they don't exist other relevant has priority in order has priority and if they don't exist other relevant has priority (by alaghrobva aghrab amend 115 CL_)
- 3- A person whom in an absent time do the jobs has priority (amend 132 CL) the question is whenever person do job of absent, in absentee times and there another person is relevant which has merit who has the priority?

Law is vague here but we could say court could select the person whom has more merits or if conditional law two or more person selected as honest (safae, seyed Hossain Ghasemzadeh - seyed mortezae - same P65).

HONEST TASKS AND ALLOWS

Honest should protected the properties and act based on absent benefits and avoid spare to property honest should mention benefits of absent. And try to protect property, so honest should act like, lawyer of absent and try to keep benefits

Tasks of honest are those we said about executor (amend 1235 to 1247 CL and amend 74 to 95 CL) although law makers clarify limits and tasks of honest in amends 1015 CL, 119 and 121 CL like executor but in amend 1028 CL, 141, 142, 174, 150 CL

Honest tasks are

Selling malady property

Regard amend 141 CL honest which receive property should sell malady property and buy something or give money to a bank for absent (amend 84 CL) regard amend 90 CL if honest left a money of absent or mad for 6 month he should pay damages.

Selling non-cash property

Any honest or inherits which receive property could sell unnecessary property with court allow and buy another property by agreement or do an action in benefit it of absent (amend 142 CL)

PAY THE LOAM AND NAFAGHE OF ABSENT

One option of absent governing is to govern to pay loan, if he has some borrows which people want their money and judge approved it, judge could sell property and give it do borrowers (mosavi khalkhali – seyed Mohammad mehdi – governing in Islam or velayat faghih P614).

Naraghi in avead alayam said: in every phase loan governing is fixed expect when governor could deny it (naraghi, Mola Ahmad ibn Mohammad Mehdi avead alayam fi bayan ghavaed alhakam P564).

Avoid to sell or rent non-movable property

One of governing of judge about absent is to be govern to take his property and if absentee has property without allegation of inherits does jurators could grasp some like sell or change, rent or land whether it may has benefit to absentee or not?

Governing of property refers and depend on necessity, like governing to pay loans and pay rights and governing should contain protect by terms mentioned. But without necessity selling isn't allowed even has benefits and if grasps mentioned (sell or change to cash or property, rent and soon) is a prerequisite for protection it's allowed because in this situation it's a one of protect governing examples (mosavi khalkhali seyed Mohammad, same P618 – 619).

Honest or inherits just could sell or change absentee property to pay back loan or cabin and not for any situation and judge allow is needed. Regard amend 148 CL sell or rent non-movable property isn't allowed expect to pay back nafagheh

and cabin as selling or rent non-movable property (when may because of sell and lack of ownership for absentee) is a harmful deal, law maker allowed it just to pay loans and nafagheh and what its necessary.

ABSENT AGENCY IN COURTS AND STRUGGLES!

If absent want something of another and debtor was disappointed cause of absence what we should do? Some jurators (najafi, Mohammad Hassan – Javaher al kalam fi sharh sharae al eslam v25 P42) said is such situation if person dies and inherits unavailable debtor, should pay loan to legal jurator because he's governing the absent. And what's governor responsibility, should he donate as absent? Or protect property. Some (same) said could donate it directly as absent here the meaning of governing is to pay the loan of absent but in general roles of religion we see: first debtor aim to pay and advice about it when inherit come pay the loan and could continue like this till he's sure about death because living avoid grasping but if no information take about him which we sure about his death the honest should pay the loan to inherits and if no inherit existed property will reach to imam (p) and in absent time jurator should get it and if he has inherits but they are unknown and unavailable honest could donate property for them and guarantee if inherits show up and request he should pay (bohrani – shaykh Yousef – hadaegh nazere fi ahkam alter altahere v20 P150)

Protect absent possible rights

Honest should protect possible right of absent it means to act and reach whatever may benefit absent or avoid what may harm him and we could mention some in below:

- A) If dead man advice a property to other and an inherit is absent regard amend 313 CL inherits calendar) it may divide or not court should focus on honest request
- B) Regard amend 24 of record law after expiring the objection the allegation of others right corruption won't be accepted so as someone object about a property of absent and request to record honest should act based on amend 16 and object in meantime.

Also it seems honest could for record about property.

Dividing heir of absent

Regard amend 303 CL whenever one of inherits absent and has no lawyer and request for division an honest determine for absent and division will hold regard mentioned amend one of honest role is it interfere division will reach to inherits and should divide between absent and others.

Regard amend 879 CL if there is an absent inherit his share will remain safe to clarification as he return or it will get to others.

- A) Regard amend 91 CL as a people die and one inherit is absent honest should request in 10days to close property

Regard amend 173 CL if inherits are absents and has no agent for himself if absent place is clear judge inform closing the property and if place is vague it inform to judge to close the property.

- B) Regard amend 199 CL as one inherit absent or mad closing will remove after determine lawyer to absent and before it property close (amend 205 CL)

Request for modulate property

Amend 208 CL said honest of absent or executor of mad should request for modulate in 10 years if they didn't do it

Meaning of modulate is to clarify the amount (amend 206 CL)

To avoid spare property and it directly refers to absent right and has impact on it. It seems modulate request is option and mentioned governors in amend 207 CL could want the last place of absent from court to do so. Others like debtors and honest could request to close the property and the modulation request of governors will accepted.

PAY THE EXPENSES

The main task of honest is to protect absent property and it's clear it need some expenses which honest should pay.

Regard amend 150 CL the expenses will get from absent properties. Amend 125 said (expenses of protection of absent property will cut from his property because human actions honored and payment is by benefited person and he is absent and an honest determined to protect his properties and its seems court should determine suitable salary and in law view it will give from amend 150 CL (emami seyed Hassan - civil right - v4 P234)

So they pay attention into mentioned amend honest by his right and amend to court allow could take his expenses from absent property (aminian modares - Mohammad - absent braves in right supportive view P66)

Also honest should pay if he determine another one to protect absent property (amend 77 CL) or regard amend 150 of mentioned amend said court could determine enough salary to honest and take it.

Peace in struggles

In struggles which hold in benefit or harm of absent honest is his legal agent. It may struggles could end in peace. It's seems regard amend 1242 CL as honest want to end struggles in peace before this need the attorney allow and then could do so. Regard mentioned amend we see in struggles out of court the attorney permission needed like ones occurred in court avoid deal with self.

Institution its needed movable or non-movable property sell by honest or rent. And sometimes may honest want to buy something to absent. We should know whether honest is one side of deal or not? It's seems regard amend 1240 CL and to avoid accessing honest, he couldn't be a side of deal and regard this and based on amend 148 CL if he want borrow or rent for absent honest couldn't be side of deal

End of doesn't task

Safe hand is a honest hand and his responsibilities is really limited and if property destroy without his grasp or attack he's not responsible for it (amends 614-556-789 CL)

<Regard to amend 121 CL rule of fire executor are the same for honest fire>

Temporary grasp for inherits in absent property

Temporary grasp for inherits in absent property is another level to terms for absent properties to inherits.

Temporary heir is different from full heir. And it is as laws (amend 1025 CL 136 to on) said is to protect property and inherits couldn't grasp in property as owner moreover stocks are contaminated not given and inherits should guarantee (amend 1026 CL) and court could determine suit salary of absent property to inherits (amend 150 CL). It seems giving temporary properties to inherit is to protect property and just recommended to possible benefit not the exact ones.

Procedure of temporary grasp of property

Regard order of amend 137 CL to able inherits to temporary grasp first they should request to court and request should have below:

- 1- Name of requester and other features like name, family name, place of living and other features which come in legal paper
- 2- Features of absent like: name and family name and last place of living before absent and other addresses which may help recognizing him
- 3- Absence date, determining the date has low affect because the term of acceptance is two years expire, after request also date is a pattern to order ass amend death and should mentioned exactly

- 4- Reasons which requester bring for himself to request so, requester should express his reasons and attach copies of documents which confirm his allegation and regard amend 95 in civil actions requester will invite or maybe deny his request based on amend 137 CL first: written request is enough and no need to attrition.

Second: based on amend 136 and 143 CL requester could be all or one of inherits and if one of them requests court just perform for him and about others share property protected by honest

Third: the temporary delivery request by person should be followed by reasons and they should bring reasons which clarify this action more in benefit of absent and others in compare when honest protect property

After getting request court regard amend 138 CL and with participation of requester and attorney will perform and custody about date of absence, place and other information and if his request accepted they prepare and advertise by requester name and request and invite absent to court.

Based on amend 138 CL performing the request of temporary grasp of absent property hold in session with attending requester and attorney and law says lack of attending avoid procedures.

Court should research about living place and, fate of absence and general terms of temporary grasp of requester and if requester has merit court will provide advertise to invite others whom have information about absent mentioned advertise in amend 138 CL in three times with enteral of a month will publish and after a year of advertise if terms exists and act amends 1025 and 1026 CL about absent property and deliver to temporary inherits not in request time. Regard amend 1026 CL inherits show up they could make up the property for others and mentioned guarantee remain till death of absent.

The topic refers to common of people and said it refers to people usual time for a special period and watch how many years people could be alive so if person is absent we couldn't divide his property because regard mentioned fact the order is to be alive, expect his absence gets longer which usual couldn't be alive and it's the common and usual lifestyle of people and mentioned by most emamiye jurators. Shahid sani said: value is that what mentioned it means usual life and if person lives more than that and about 120 years it hasn't value and then offers another suggestion and its 10 years which in shahid sani hundred years is possible because regard the allegation is accepted but we have no valuable document about is and citation do not confirm it (ghasem zadeh, seyed morteza, omar hasbi ghaeb mofghood al asar P145).

Another talk in his problem exist and its Marhoom Sayed Morteza and Sadegh and alamaeh talk in shahid sani view it is stronger and they try to find absent

about 4 years and if no information get the order of assumed death. It means this property divided into inherit and actions will performed (jebi, ameli, zein al din ben ali (shahid sani) masalek al faham fi sharaye alsalam, jebi dovom P292).

Legal actions of absent death

Civil law about assumed death the value is the usage in public and said: order of assumed this approved when the last do it of last information about absent (amend 1019 CL). Also determination of usage has not specific feature and certainly different view maybe accorded. To do so law maker in amend 1020 civil law provide some actions to keep absent alive based on habit. We analyze below. First we express amend 1020 of civil law which said people couldn't be alive.

- 1- When 10 years after the last information about absent passed and absent was older than 75 years.
- 2- When a person was a member for any vanish and 3 years after peace no information receive. The time about war will be 5 years
- 3- When someone in a cruise were in the ship destroyed and three years past from that event without any information about passenger

Law maker in the rest said (about recent event if they do it of moving ship accepted and ship do not reach destination and move to another harbor and no information received about it ship accented as destroyed:

- A) The time for traveler in Caspian and Persian gulf is no gear
- B) To travel in Oman sea and India ocean and Ahmer sea and Miditaraneh and Black sea and Azof time is 2 years
- C) To travel in other sea time is 3 years (amend 102 CL)

CONCLUSION

In law and jurator view absentee is a person whom a long period pass of his absence and no information gathered about his living or death. Jurators call it without news regard this some law expert use without news in steal of absentee. If a person absent for as hart time or someone knows about this living but don't know about place he called absentee if absentee doesn't determine an agent for his property and has no legal agent. Court will determine someone as honest based on law in an intervalbetween agent and absent attorney should protect property and some observes should determine.

About assumed death of absentee religious ordered use the natural death orders for him after clarify the order the reasons which honest provided will eliminate. Whenever useless expect actions about protection of property most of emamiye jurators said searches needs jurators orders and some believes no need to jurator order and others could do it even spouse. In fegh-h we have no definition about

search and what mentioned said to be confident about absence although the civil law said publishing advertise in newspaper and invite others to inform absent is necessary.

But it's not a block to avoid any help and research to probe right

References

Holy Quran translated by ayatollah makarem shirazi.

Persian references

Emami - sayed Hassan - civil right - ketabforoshi eslami pub Tehran 1371.

Aminian Modaress - Mohammad - absentee and braves in supportive rights view sant pub - Tehran - 1380.

Barikloo - Alireza - people and civil support - sant pub Tehran 139.

Jebi alamel (shahid sani) zain aldin ibn ali - rozelabiyeh fi sharh almea aldameshghiye translated by Dr.hamid masjed saraee payam noor pub - 3rd print - Tehran - 1390.

Jafari langeroodi - Mohammad Jafar - mabsot in right terminology - ganhdanesh library Tehran 1381.

Dehkhoda - ali akbar - dehkhoda dictionary - Tehran university -dehkhoda institute - Tehran.

Safae - sayed Hassan - ghasamzade - sayed morteza - elementary course of civil right of person and mads - sant pub Tehran 1375.

Musavi Khomeini - Roohallah - Tahriralvasile - ali eslami translate - eslami pub office Qom 1386.

Mosavi khalkhali - Sayed Mohammad mehdi - governing in Islam or velayat faghih - Islamic publish office related to Qom teachers - Qom 1380.

Mohammad Ali - Sharh tabsare alame heli - dar al fekr pub Qom 1371.

Arabic references

Borhani - shaykh Yousef - al hadaegh - nazere fi ahkam aletre altahere - Islamic office pub related to Qom hoze teachers - Qom 1405 AH.

Aljebi al ameli (shahid sani) zain aldin ibn Ali - masalek alafham elatanghih sharae aleslam - Maaref eslami institute Qom 1413.

Helli (mohagheh heli) abulghasem najam aldin jafar ibn Hassan - sharae aleslam fimasael halal and haram - research sadegh shirazi - esteghlal pub Tehran 1388.

Najafi Mohammad Hassan - javaher alkalam fi sharh sharae aleslam - dar alehyatorath - bayroot 1981.

Naraghi - mola Ahmad ibn Mohammad Mehdi - avaea alayam fo bayan ghavaed al ahkam - Islamic ads pub office Qom 1417.

Roles

Role of judgment in public and enghelab court in civil action 1379/1/21.

Role of judgment of civil approved 1318/6/25 reformed.

Action law procedures – edited by Sayed Ahmad bakhtar – jungle pub Tehran 1389.

Record law approved 1310/12/26.

Family support law 1291/12/1.

Civil law in judgment procedure edited by Sayed Mohammad Reza Hossaini – Majd pub Tehran 1387.