

## **INVESTIGATED THE LEGAL STATUS OF ABSENTEE WOMAN OR THE RIGHTS AND OBLIGATIONS THAT WOMAN HAS DURING HER HUSBAND'S ABSENCE.**

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### **Abstract:**

Disappeared absentee is a legal term which in civil law and the law of non-litigious used by legislator. In the meantime, divorce of the wife of such a person in the supply mode or lack of support is investigated by clergyman. Due to the available documentation validity and before entering the conflict among them, and possibility of the customary, through preferences, it is possible to permit divorce even in cases of extended maintenance expenditure. Otherwise, lack of access to the assemble and a trace of this couple and accompanied by his absence with the non-fulfillment of matrimonial duties and problems and its consequences for wife, investigating the issue of divorce for her regards as "Hardship" turns necessary. Absentee disappeared one who "her absence is a long time laps and there is not any news about her." provisions and effects of absence of disappeared that book V of the Civil Law assigned to it, most of it were taken from law. In fact, the basis of the Civil Law in this section jurisprudence is. The absence of absentee that in the Islamic law it is known to cut absenteeism the effects in the absente private property and also effects in condition of wife of Absentee in terms of survival parity.

**Keywords: fifth religions, divorce; support; the Civil Law; disappeared absentee, dowry, inheritance, custody.**

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**Introduction:**

The importance of family and its undeniable effect on human health and the community has caused like all human sciences sociology, philosophy, ethics, economy, history, rights and even other sciences such as biology and statistics from their particular point of view to be discussed, family law profits from research in these sciences for setting the rules governing the natural and social center. In the current legal with some ways it is possible said in the definition of family: "The group is which because of the relationship or marriage, rights and social solidarity results leadership and the head position.

Family in special and its limited meaning includes couple and their children a group that will guide and support with the father and solidarity among its members rights and obligations brings there is no, among other relatives. In Article 1105 the Civil Law which head of the family is dedicated to husband the family is used in this limit mean. So since the husband is present on the premises of his residence, property, children and his wife under legal system are specific but when this indicator disappeared and there was no trace of and her, the legal system governing property, child and her wife which each one is independent discussion and requires its related topics it will change accordingly. So we must first consider the concept of absence to find out who is Absentee? And then see his wife during the absence of him what rights and obligations will have?

The first element of the legal definition of Absentee, is absence means absence from the residence (Residence or place of work) which is an important center of affairs of person.

Article 1002 of Civil law is: A personal residence is where the person has resided here and is also an important center him if specified location is apart from the important center of Him, his Affairs Center is considered the residence.

Article 1011 of the Civil Law provides that: disappeared absentee is person who pass long time from his absence and there is not any news about him. In the term legally absentee has a more accurate meaning and, therefore, should distinguish between the concept of "absence" and lack of "presence".

"Absent" Person is who which there is no doubt about him and there is not any information about his residence or his usual housing. However, in accordance with Article 1011 of the Civil Law: "disappeared Absentee is person who passed long time from his absence and there is not any news about him".

This means that we have doubts about his survival, in other words, do not know that he is alive or dead. Because for a long time has left his normal residence or housing without leaving a new indication and then there is no information about him. The reason that in this Article The legislator has added Description "disappeared" on the word "Absentee" is Distinguishing the concept absence from the unknown.

What is the purpose of this study indeed, the legal Investigating of the Status of The wife of Absentee or the rights and duties that mentioned has during husband absence, about these women may several questions arise that the aim of this study is answering these questions and a comparative analysis mentioned information. For example, whether mentioned has right of alimony as the time of presence of her husband or because of the lack of him has no rights.

*What will be the wife of the heir dowry? Should be considered absent person dead or alive?*

Whether in terms of both the wife to leave him right or not right we will be On the other hand, the question arises what assignments during the absence of the wife is? Absent define and differentiate it from similar concepts missing

Article 1011 BC In the definition of missing absentee says: "missing person who disappeared from his absence long time laps and not any news of him." Absence means being hidden, invisible and are unclear. The absence of a long time laps realization requires that the person is away from home and her home town and news of his life or death is at hand.

### ***The fulfillment of the legal concept of absence***

According to Article 1011 BC to fulfill the legal concept absent three elements are required:

1. Absence - The first element of fulfilling the legal concept absent, gossiping. Absence means being away from home or location. In general, the absence of legal residence in the center of one of the most important element in the definition is important.
2. The lapse of a relatively long period - as previously stated, long or short-term basis at the discretion of the court, the landlords and their sentence is the local custom, And the validity of the variables in different situations and different.
3. The lack of life or death news of absent - to fulfill reported as missing the absentee loss of life or death is necessary.

***Dissolution of marriage by divorce, the court also absent from the dissolution of the marriage is presumed missing as a result of death sentences.***

In Iranian law

The legislature has decreed Shiite rights compliance That if the woman will not be expected to determine the life or death of the husband absent themselves can lead the command of "1029" the civil law, Of this article stating: "When a person is absent for four years, could divorce his wife, in this case with the article" 1023 "to divorce his ruling."

Absent wife divorce because of hardship caused by absence one of the absent reference to Article 1130 of the Civil Code means the dissolution of the marriage the wife (hardship), respectively. Legislator in 1981 Article 1130 of the Civil Code to be modified as follows: "In the following cases a woman may go to the judge and get divorced if it is proved to the court Durability is that marriage causes hardship can be used to prevent loss and hardship, forcing couples to divorce and divorce is possible if the judge not to leave."

### ***Back absent wife***

Article 1133 of Hegira. M provides: "Man, you can refer to the conditions provided in the law to make divorce his wife." By calling this matter is rooted in Islamic law derived from the Quran and Sunnat seemingly looks as the wife of absence does not create a problem for couples, his return is also not a problem.

### ***Divorce wife Absent in schools Khamse***

In Islamic law in the legal about whether the wife the right to dissolve the marriage with Absent or not Absent, is controversial. But most modern scholars have been given such a right to the wife, the wife of such a right. In most jurists Public Iranian civil law recognized the right to wife and he can be in various ways to achieve this.

### ***In Shiite Jurisprudence***

In Shiite jurisprudence in relation to the different ideas are absent wife. Shi'a jurists believe that if the possibility to pay alimony, wife, spouse absent in the Shiite jurisprudence in relation to the different ideas there are Shi'a jurists believe that if the possibility to pay alimony, the wife is absent, he but also the right to divorce is bound to abide marriage relationship.

### **In public law**

The date of reference to judge not wait four months and ten days if news of the couple and the number keeps on his marriage is lawful.

### ***Absent spouse divorce attorney with the condition in divorce***

#### ***Jurisprudence***

The famous jurists law allowing divorce and their arguments are as follows.

1. Substituent in the actions of the general license on behalf of a divorce as well. The explanation that divorce is not including the actions of stewardship person in that condition.
2. Differences between males and other persons not in the public and the kind of evidence that has been licensed to practice law in divorce entered the woman's attorney is And as the woman's lawyer may be other differences between men and women, there is also the lack of difference is included to represent her in a divorce,
3. The kind of evidence indicate that the license to practice law in divorce, including the wife as well.

### ***Public law***

In public law jurists substituent on whether divorce lawyer wife or another person correctly understood, however, that if a husband to wife in divorce outcome Hanafi law, this submission is in fact substituent. The main difference between the substituent and the substituent delegation that the lawyer will mail client, and the client's view While the delegation, divorce delegated to

him by a person who, acting in accordance with his will and the will of the client, which is not the same husband.

### ***In Iranian law***

According to Article 1119 of the Civil Code, the parties to the marriage can not be in any condition contrary to the requirement of signing the marriage contract or other appropriate contract outbreaks, such as the condition when her husband take another wife Or spend a certain period absent or has left or attempted murder or ill-treatment against women is that their life together becomes intolerable, Female attorney and lawyer in substitution demonstrated that after realizing absolute requirement in court and make your final decision.

Conclusion the theory of jurisprudence regarding missing absent in religious divorce Khamse

### ***Terms of divorce***

Shiite scholars believe that the lack of mandatory husband divorced woman and not forgiving the woman's condition. So if it was not a good charity, women's four-year wait And after the divorce ruling applies to those who hold or will hold (Mofid, 1417: 537; Tosi, 1416: 77/5; Helli, 1410: 49/2; Helli, Najmuddin,: 201; Ameli 1403: 68/6, Mousavi Khomeini, 1403: 340/2).

### ***Assigned to permanent marriage ruling***

Sunni religious decree referred only to marriage, but not because of the Imami said, but they do not correct temporary marriage. The four Sunni religious scholars advocate the abrogation of temporary contracts and proof of punishment on its perpetrator (Jaziri, 1406: 90/4), while all of them agree on the legitimacy of temporary marriage, but believe that the abrogation of the decree and the abrogating and abrogated its time disagree (Qureshi Damascus, Beata: 449/1).

### ***Examine the relationship of marriage, inheritance and dowry absent in the faiths absent Khamse and Iranian Law***

The effect of the assumed death sentence on the marriage relationship:

According to some jurists One way to dissolution of the marriage the wife is missing presumed death sentence That such a judgment wife, who kept death will escape from the constraints of

marriage with missing presumed death sentence contrary to others who know no effect on the relationship of marriage. Continuing to examine the two doctrines.

### ***Away dowry missing in the Khamseh religions and Iranian Law***

Dowry absent wife to divorce

According to Article 1082 of the Civil Code as soon as it passed the wife of ownership contract is based on all Seals Of course, if the wife has the right to demand all your love, or to absence of dowry in the marriage contract has been agreed and is also located nearby. Second paragraph dowry missing wife after divorce

Before the woman could give her husband Seal's bill will possess it as if it will sell or loss. Article 1082 of the Civil Code that says: "Upon conclusion of the woman is the owner of the seal can be any type of capture that she may".

### ***Confirmed Back Away In marriage***

Return absent Man

When couples go missing presumed dead after the verdict:

1. If unmarried woman is married, she is absent.
2. If the missing woman's husband has married her second husband remains in finding the causes of nullity of marriage, the husband is not her first.
3. If a woman is absent in accordance with the provisions of article 1029 BC. Of which provides: "If a person is absent four years can divorce his wife in case of divorce compliance with the 1023 ruling gives him."

### **Return absent Female**

Article 1133 of Hegira. M provides: "Man, you can refer to the conditions provided in the law to make divorce his wife.

### **Discussion and conclusion**

Absent wife after her husband's absence has numerous rights and obligations that

It can be a general classification of financial and non-financial rights and duties divided wife:

1. The financial rights of woman Away: In summary, include:

A. right to alimony and alimony under Islamic Iranian civil law of permanent marriage the husband and wife alimony to the woman, there's the advantage that the legislator.

B. The right to a dowry: the inalienable rights of the wife's dowry in accordance with the law of the contract as soon as she becomes its owner and can be any sort of possession she may and the couple's absence will have no effect on it. In Islamic jurisprudence, fiscal stamps on the occasion of the marriage, the man to give it to the woman. The obligation relating to the dowry acquisition arising from the provisions of the law and religion is the root of the contract and in any case requires that the man giving the seal.

C. the right to inherit such a right belongs to the wife: absent subject to proving the death of absent or the expiration of the extended period of Islam the Quran verses according to women the right to inheritance. But scholars disagree absent in inherited sentence, later famous opinion is that you have time like he normally does not survive until then wait.

2. The right of non-financial absent wife the right to dissolve a marriage that can be achieved in various ways:

A- Apply through a divorce from the Court due to the absence of the husband according to article 1029 of the civil law and the civil law regulations regarding the divorce the wife absent based on jurisprudence, though the formalities prescribed in the civil code, article 1023 ad books about juridical can't be seen.

B- Apply through a divorce lawyer by resorting to bet in a divorce.

C- Third Way, divorce, citing financial hardship in the absence of couples whose narrowness and constriction for various reasons this is true of the wife absent such hardship due to the impossibility of charity absent, due to lack the possibility of assistance in the welfare of their family and so on.

In Islamic jurisprudence, as well as whenever the husband absent in harsh conditions and were severe hardness and discomfort can be dominant because of severe hardness and discomfort caused by the absence of divorce.

D- Action by the other wife through cancellation of request if there is cause to comply with the cancellation of certain circumstances. In Islamic jurisprudence as well as three things could have caused cancellation of the wife is absent:

\*being the defect,

\*\* The option of,



### \*\*\*deception

With his wife absent for any reason absent dissolve the marriage by law are required to hold them.

3-wife missing assignments will be divided into two parts:

A. guardianship: When both wife and husband are in the custody of the offspring is dedicated only to them reason is absent when the couple applied for custody of the offspring no longer possible The right didn't she legally and be transferred to the wife of another without being able to claim custody of children than absentee.

B. number: wife absent to be absent with the marriage dissolved are required to keep some. a person who is absent and cannot be filed if he held his death proved his wife from the date of receipt of the news of the death of the people adopting feet. If life be filed absent news, but it is not that his wife must wait up to receiving the news that his death or divorce.

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