



AENSI Journals

Journal of Applied Science and Agriculture

ISSN 1816-9112

Journal home page: www.aensiweb.com/jasa/index.html

Absentee's Finance

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ARTICLE INFO

Article history:

Received 28 February 2014

Received in revised form 19

April 2014

Accepted 23 April 2014

Available online 15 May 2014

Key words:

absent, absentee, properties, trustee

ABSTRACT

Absentee has an especial legal status and some rights and assignments are determined for him in law. These rights and assignments are investigated as financial and non-financial. This study investigates the legal cases related to ... finance.

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To Cite This Article: Mohammad Reza Mohammadzadeh Rahni, Peyman Kavousi and Darioush Sinaeian., Absentee's Finance. *J. Appl. Sci. & Agric.*, 9(5): 2226-2228, 2014

INTRODUCTION

According to article 1011 law of Iran, "absentee is someone who's absent for a long time and there's no news from him."

The importance of investigating the absentee is to determine the ending of his character. Because this question is arisen that when absentee's personality is ending. It's also very important disposition of his wife and her property. Although there's been mentioned about absent spouse in articles and law books, but according to the importance of absentee and his especial legal position and also according to his especial rights, it's necessary investigating this subject especially.

Absentee's finance:

Absentee's finance is important under two conditions to be investigated by judge: first if absentee has leaved a property. This condition is very important because if absentee doesn't have a property or has taken it with him, it's cancelled the problem. As a result, it's obligated that absentee has leaved a property to investigate the problem. The second, it's obligated that his property to be without a sponsor, if his property has a sponsor, nobody has the right to interfere his finance. It's possible that absentee chose a sponsor for his property, so if absentee has leaved a property and it's without a sponsor from him or law, it'll provide dealing with his finance and it'll been investigated in several steps. The legislator has determined four steps for absentee's affairs:

To keep the absentee's property before determining trustee:

After it's been cleared absentee's missing to court, a trustee will be determined for his properties. Before determining a trustee, the legislator will charge attorney general with a duty of absentee's finance. Then the attorney general has to charge the required actions to keep his property. For example, he seals them, sells the possible damage property and looks after for his credits.

If absentee has some properties in a foreign country, consular officers are responsible for his property. They will have the same duties with attorney general (article 115, non-litigious act)

Appointment a trustee to deal with the absentee's finance:

To avoid the wasting the absentee's finance, the legislator determines a trustee for his property. According to article 1012 of civil law, is absentee hasn't chosen a person for his property and even there's no one to have the right of it legally, then the court chooses a person to deal with his property.

The legislator gives the right to the court to take a guarantor from the determined trustee. In this way, if the trustee wastes absentee's property, he will have to compensate it.

Someone who's responsible for absentee's property in his absent time has priority over others to determine a trustee for him (article 32, Iran non-litigious act). By the way, absent heir has priority over the others provided that he gives a guarantee to the court (article 1012 of civil law)

Trustee's Duties:

Trustee is responsible for absentee's property and he must observe absentee's interest and avoids actions to waste his property.

It's been determined the duty of giving alimony to wife. The article 1028 of civil law says about it: the trustee, who's chose for keeping of absentee's property, must give wife's alimony which is not expired.

Trustee's wages is paid by whom and from where?

In the cases that it's been determined a trustee for absentee's property, the court can determine a specific wage for trustee from absentee's property (article 150, non-litigious act).

When absentee's property don't have income, according that it's the law to give wage for human's work, but it can be said that trustee's wage is paid by absentee's property (acquired by the articles 95 and 125, non-litigious act).

Trustee's Irresponsibility:

When a property is given to someone as a deposit and the trustee treats with that according to owner's orders and custom requirement, and that property fires or diminishes or be stolen, the trustee is not responsible for that.

When someone manages the absentee's property without his allowance or who have the right of allowance (interference), if getting know the allowance when manages that or delaying in interference doesn't cause damage, he doesn't have to charge the costs. Because although people actions are respectful, but manager's interference prevents him to get back to get the costs. However absentee's affairs manage by a righteous person's interference. It may cause not interference or prevention of it. In this case the manager is responsible for costs that were required to manage.

The article 306 of civil law has predicted two assumptions: "is someone manages the absentee's property without owner's allowance or who is responsible for that, he must give account of his term of office. If it's possible to obtain consent or delaying in consent doesn't cause harm, he doesn't have the right of charging it. But if non-interference or avoiding it causes damage for owner, interferer has the right to get the costs which were required to manage.

Legislator also notes to this fact that considers good faith and personal interference as priorities to determine the trustee and says about this: those are in charge of his property when he's absent; they have priority over the others to determine the trustee for absentee.

Giving Property to Heir's Temporary Seizure:

After two years from the date of the latest news of absentee, the legislator considers the heir's interest and gives right to him to require the court to seize the absentee's property.

According to article 1025 of civil law "before the death sentence is given absentees heir can require the court to give him the property provided that first, absentee hasn't chosen anyone to manage his property, and the second, it's been passed two years from the latest news of absentee. In this case it's inevitable observing the article 1023 of civil law for announcing one year (articles 1023 of civil law and 139 non-litigious acts).

According to article 1026 of civil law" about the before article, the guarantee has to give adequate assurance to take care of property in the case that the third party has any right for his property.

After temporary seizing of property by heir, his duties are the same with trustee.

Where from and how heir's wage is determined?

The court can determine a wage for heir the same with trustee from absentee's property. Even in the case that absentee's property doesn't have any income, paying the wage is allowed by property (article 150, non-litigious acts).

Absentee's Presumed Death Sentence and Giving the Property to Heir:

According to article 1019 of civil law" the absentee's presumed death sentence issues in the case that it's been passed a while since the last news from absentee.

According to articles 1020-1021-1022, civil law has determined a while that absentee is not alive since that date.

While that according to above cases at the end, the absentee is not supposed alive and it can be required issuance the presumed death sentence, it's been passed at least three years and maximum ten years from the date of last news of absentee. If after the prescribed period, if it's been required issuance of the sentence by heirs, the court, after investigation, starts to publish the announcement and will invite people who may have any news

from absentee to deliver the information to the court. This announcement publishes in Tehran newspapers three times, monthly.

When the court can publish the presumed death sentence?

When the court can publish the presumed death sentence that one year is passed from the publishing the announcement and absentee's life isn't known yet (1023 civil law and 155 non-litigious acts).

The heir's rights after issuance of presumed death sentence

After issuance of the absentee's presumed death sentence, absentee's property will certainly give to heir and after that the heir is owner of property. After finality of the presumed death sentence, guarantees have been removed from trustee and heir (article 160 non-litigious act).

Absentee's Back:

If after issuance of the presumed death sentence and giving the property to heir, the absentee is found, then according to article 1027 of civil law, the heir has to return the property to his, but he's not responsible for whatever is spoiled.

Is he has sold the property and has bought something else, it's for founded absentee but if he has sold it and has spent its money, he's not responsible for property. Because according to law he was the owner of that property.

Conclusion:

In this study, addition to note the concept of absentee and trustee, it's been mentioned the power of trustee and heir in the case of giving the property to them, and the presumed death sentence and the effects of that, and ending the absentee's character regard to property that has been transferred to heir that is alive when issuance of the sentence. By the way, the investigations show that the effects of presumed death compared to absentee's finance doesn't have more difference with the real death. Both of them have the same effect. The difference is only in the position of absentee regard to determine a trustee for him and the return the property to him in the case of being alive after issuance of presumed death sentence. By returning of absentee there is no more reason to remaining of presumed death sentence. Even the heir and even own absentee not more is absent. He has the right to cancel the sentence from the court that has issued it.

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