



PRESUMPTION OF DEATH FOR PURPOSES OF SUCCESSION

SECTION 4: *Presumption of death.*

For purposes of settlement of his estate, a person shall be **presumed dead if absent and unheard from** for the periods fixed in the Civil Code. But if such person proves to be alive, he shall be entitled to the balance of his estate after payment of all his debts. The balance may be recovered by motion in the same proceeding.

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Note that there is *no independent action* for the declaration of presumptive death, except that a spouse may seek the declaration of presumptive death of his or her spouse for the purpose of remarriage under the Family Code.

If the absentee turns out to be alive, he or she may recover the balance of one's estate after the payment of all debts.

- The balance may be recovered on motion in the same proceedings
- A person who was erroneously declared presumptively dead, either because the absentee appears or the fact that the absentee is still alive is proved, may **recover one's property in the condition that it may be found and the price of the property that may have been alienated or property acquired with such sums, but the fruits and rents may not be**

What is the effect of absence on contingent rights of the absentee? *Art. 393 to 396 of the Civil Code*

- ▶ **Article 393.** Whoever claims a right pertaining to a person whose existence is not recognized must prove that he was living at the time his existence was necessary in order to acquire said right. (195)
- ▶ **Article 394.** Without prejudice to the provision of the preceding article, upon the opening of a succession to which an absentee is called, his share shall accrue to his coheirs, unless he has heirs, assigns, or a representative. They shall all, as the case may be, make an inventory of the property. (196a)
- ▶ **Article 395.** The provisions of the preceding article are understood to be without prejudice to the action of petition for inheritance or other rights which are vested in the absentee, his representatives or successors in interest. These rights shall not be extinguished save by lapse of time fixed for prescription. In the record that is made in the Registry of the real estate which accrues to the coheirs, the circumstance of its being subject to the provisions of this article shall be stated. (197)
- ▶ **Article 396.** Those who may have entered upon the inheritance shall appropriate the fruits

PERIOD OF ABSENCE FOR PRESUMPTIVE DEATH

| Period of Absence for Presumptive Death | |
|--|---|
| Absentee disappeared below 75 years of age | 7 years for all purposes except succession. 10 years is necessary for purposes of opening up the absentee's succession |
| Absentee disappeared after 75 years of age | 7 years for all purposes except succession. 5 years only for purposes of opening up the absentee's succession |
| Absentee disappeared under dangerous circumstances | 4 years when absentee disappeared under dangerous circumstances enumerated in Art. 391 of the Civil Code. |



**IN RE: Lukban v. Republic,
98 Phil 574 (1956)**

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Facts:

- Lourdes G. Lukban filed a petition in the Court of First Instance of Rizal to be declared a widow of her husband Francisco Chuidian. The couple got married in 1933 but Francisco left after a quarrel and has been missing for over twenty years. Lourdes believes Francisco is dead and wants to remarry.

Issue:

- Can the court declare a person presumed dead based on a spouse's petition?
- Can this declaration be made through a special proceeding?

Ruling:

- The court cannot grant a judicial declaration of presumed death as it is not authorized by law.
- A declaration of presumed death is only a prima facie presumption and disputable

IN RE: Lukban v. Republic

"A judicial pronouncement to that effect, even if final and executory, would still be a *prima facie* presumption only. It is still disputable. It is for that reason that it cannot be the subject of a judicial pronouncement or declaration, if it is the only question or matter involved in a case, or upon which a competent court has to pass xxx.

It is, therefore, clear that a judicial declaration that a person is presumptively dead, because he had been unheard from in seven years, being a presumption *juris tantum* only, subject to contrary proof, cannot reach the stage of finality or become final."