"The living, the Dead, The Undecided": An Annotated Bibliography of law review Articles Dealing with the Law of Absentees and Returnees

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Abstract

Over the years, the legal problems posed by absentees and returnees have attracted the attention of scores of law review authors. Their work is difficult to access, however, because it is scattered across time and place. This is particularly problematic for a field that has no current organizing text. Accordingly, this bibliography collects and annotates the more notable pieces, dividing them into three principal categories: General Works, State-Specific Works, and Subject-Specific Works.

INTRODUCTION

At the start of the hit Broadway musical The Addams Family, patriarch Gomez Addams, standing in a graveyard, solemnly informs the audience:

Once a year, we gather beneath our Family Tree, to honor the great cycle of life and death. Come, every member of our clan—living, dead—and undecided—and let us celebrate what it is to be an Addams.¹

Cases involving the “undecided,” known legally as “absentees” while they are gone and “returnees” if they reappear,² force courts to sort out numerous details.³ This is because these individuals—presumably dead but possibly still alive—are in a state of suspended animation,⁴ as are their spouses, creditors, debtors, employers, and heirs. Recognizing that the living must “get on with the business of living,”⁵ the law provides methods for restoring order to such situations, even if its solutions, which rely heavily on


³ As one might expect, absentees and returnees figure prominently in popular culture. Recent novels include MEGAN ABBOTT, THE SONG IS YOU (2007); ALAFIAJN BURLKE, IF YOU WERE HERE (2013); GILLIAN FLYNN, GONE GIRL (2012); ALISON GAYLIN, AND SHE WAS (2012); NELL GORDON, THE COMPANY YOU KEEP (2003); STEWART O’NAN, SONGS FOR THE MISSING (2008); TOM PERROTTA, THE LEFTOVERS (2011). Recent movies include Abduction (2011) (starring Sigourney Weaver); Changeling (2008) (Angelina Jolie); Flightplan (2005) (Jodie Foster); Gone Baby Gone (2007) (Casey Affleck); Megan is Missing (2011) (Rachel Quim); The Forgotten (2004) (Julianne Moore); Winter’s Bone (2010) (Jennifer Lawrence). Recent TV shows include Alcatraz (Fox, 2012); Lost (ABC, 2004–2010); Missing (ABC, 2012); The 4400 (USA, 2004–2007); The Missing (Starz, 2014–); Vanished (Fox, 2006); Without a Trace (CBS, 2002–09). In dissecting such fare, one observer has written:

Films and TV series about disappearances [are] so popular because they present a scenario more haunting than death. At the core of each story of a disappearance is the question of whether to “disappear” is to die, if it’s to be reborn, or if it means being stuck in the mercurial limbo of other peoples’ imaginations. [T]he characters who are left behind grapple obsessively with the question of whether their vanished beloved is “out there, somewhere,” or entirely “gone.” Ghosts, aliens and giant lizards be damned: the most frightening presence is the lack of a presence. A person’s shift from a physical being to mere idea is the most terrifying, and most intriguing, of horror stories.


⁴ See, e.g., Dayton v. Dayton, 725 S.E.2d 439 (N.C. Ct. App. 2012). In 2004, Douglas Dayton disappeared and was not heard from again. In 2010, his mother sought to have him declared dead, requested that she be appointed administratrix of his estate, sued to collect his life insurance, and demanded payment of an additional $100,000 because of the policy’s “accidental death and dismemberment” clause. Disposing of these matters required the court to: 1) appoint a guardian ad litem to protect Douglas’ interests; 2) establish if he was alive or dead after examining the circumstances of his disappearance and all plausible alternatives; 3) decide if his mother was qualified to administer his estate; 4) determine if Douglas died while the policy was still in effect; 5) resolve if his death was from natural or accidental causes; 6) consider whether his mother, either in her capacity as administratrix or as beneficiary, should have to post a bond to protect the insurance company in case her son reappeared; and, 7) take into account the claims of known and potential creditors. Because the policy designated his mother as the sole beneficiary, the court did not have to delve into such questions as whether Douglas died with a will or had other heirs.

⁵ Professor Jeanne Louise Carriere has called absentees “the living dead.” See infra Item 29 of this bibliography.

Despite the intuitive appeal of Professor Carriere’s phrasing, her terminology is inapt. Since 1968, when George Romero’s cult classic Night of the Living Dead premiered, the words “living dead” have been understood as referring to zombies. Zombies (at least as conceptualized by Romero) are beings who unquestionably are dead. See Stephanie Boluk & Wylie Lenz, Introduction: Generation Z, the Age of Apocalypse, in GENERATION ZOMBIE: ESSAYS ON THE LIVING DEAD IN MODERN CULTURE 3–5 (2011). In contrast, the undecided might be alive or might be dead (much like Schrödinger’s cat).

presumptions about life and death, sometimes produce absurd results. According to statistics compiled by the FBI, 750,000 missing person reports are filed each year; at any given moment, 90,000 people are missing. While most disappearances are of short duration, others result in investigations that remain open for decades; even today, searches are still looking for (among others) Amelia Earhart, Jimmy Hoffa, and Judge Joseph Crater.

6 In 1994, Eugene Miller was declared legally dead. In 2013, he reappeared, explaining that he had disappeared to avoid paying child support but now needed to reactivate his Social Security number to obtain a driver’s license. When he sought to have his declaration of death set aside, his request was denied by an Ohio probate court:

The judge noted that Ohio law does not allow a declaration of death to be reversed after three years or more have passed.

“I don’t know where that leaves you, but you’re still deceased as far as the law is concerned,” Judge Davis told Mr. Miller during the 30-minute hearing, according to The Courier, a newspaper in Findlay.

The newspaper called Mr. “the most famous dead man alive.”

In an interview, Judge Davis said that the case was decided “in strict conformity with Ohio law,” but that it had led to “a bizarre set of circumstances.”

He suggested that Mr. Miller’s situation could lead the Ohio legislature to rethink the law. In the meantime, he said, Mr. Miller can appeal the decision or take the matter up with the Social Security Administration, which might have a different view of the law.

John Schwartz, Declared Legally Dead, as He Sat Before the Judge, N.Y. TIMES, Oct. 12, 2013, at A14.


60% of missing people are adults over 18. 40% of missing persons are juveniles. 52% of missing persons are male. 48% of all missing persons are female. 56% of missing persons are white. Among missing persons in the U.S., African Americans are overrepresented. They make up 33% of overall missing persons while they represent 13% of the total U.S. population. The race of 7% of missing persons is not specified. 2% of missing persons are Native American.

Id.

8 In a 2013 interview, Todd Matthews, the communications director of the National Missing and Unidentified Persons System (www.namus.gov), explained:

In 2012, we had 661,000 cases of missing persons; and that’s just from that one year. Very quickly, 659,000 of those were canceled. So that means those persons either come back; in some cases, located as deceased persons, maybe never an unidentified person; or just a total misunderstanding. So at the end of 2012, of those 661,000 minus the canceled, we had 2,079 cases that remained at the end of the year as unresolved.


9 See, e.g., Mellon v. International Group for Historic Aircraft Recovery, 33 F. Supp. 3d 1277 (D. Wyo. 2014), aff’d, 612 F. App’x 936 (10th Cir. 2015) (dismissing the plaintiff’s claim that the defendant was refusing to reveal the location of Earhart’s plane, which disappeared somewhere over the Pacific Ocean in 1937, so that it could keep fundraising).

See also, In re Search Warrant for Four Contiguous Parcels of Real Property in Milford, Michigan, 2006 WL 1779436 (E.D. Mich. 2006) (rejecting a newspaper’s request to unseal a 2006 search warrant application tied to Hoffa’s 1975 disappearance, which many believed was ordered by the mob).

10 Crater, who vanished in 1930 after stepping into a New York City taxicab, continues to hold a special fascination for the legal profession. See, e.g., Eugene R. Fidell, Judge Crater’s New York, 8 GREEN BAG 2d 321 (2005) (reviewing RICHARD J. TOFEL, VANISHING POINT: THE DISAPPEARANCE OF JUDGE CRATER, AND THE NEW YORK HE LEFT BEHIND (2004)). See also People v. Austin, 168 Cal. Rptr. 401, 406 (Ct. App. 1980) (Hopper, Acting P.J., dissenting) (“Searching People v. Hobbs (1952) 109 Cal.App.2d 189, 240 P.2d 411 for its direct applicability to the instant case is to no avail and is as unrewarding as have been the searches to date for Judge Crater and Ambrose Bierce.”).

Although he was not an attorney, Bierce’s disappearance in 1914 (possibly at the hands of Mexican revolutionaries) likewise intrigues lawyers because he is the author of The Devil’s Dictionary (1911; originally published in 1906 under the title The Cynic’s Word Book), a satirical glossary that includes many legal terms. Bierce’s definition of “litigation” as “a machine which you go into as a pig and come out as a sausage” has proven particularly enduring. See, e.g., Alexe v. Lucent Techs., Inc., 2007 WL 5026864, at *4 (D.N.J. 2007); Klinge v. Bentien, 725 N.W.2d 13, 14 (Iowa 2006). See also In re Damon, 40 B.R. 367, 378 (Bankr. S.D.N.Y. 1984) (“The legal process is not, as defined by Ambrose Bierce, a meatgrinder with the lawyer turning the handle.”).
Although individuals sometimes do vanish inexplicably,12 most people in the United States go missing for one of five reasons: 1) they are exposed to a "specific peril," such as a hurricane,13 industrial accident,14 terrorist attack,15 or war16; 2) they succumb to foul play17; 3) they fake their own death for insurance purposes18; 4) they run away to start a new life,19 either because of troubles at work20 or


Of course, inexplicable disappearances are easily explained if one believes in alien abductions, the supernatural, or time travel:

[Sometime after December 2005, when the judgment was entered[,] and February 2012 when this assignment was filed, Wolpoff & Abramson[,] vanished as attorneys of record [for the plaintiff]. No consent to change attorney was ever filed nor was a motion made in that regard.

The court can posit several possibilities for this[,] such as they moved their law office to Brigadoon, Scotland and they will reappear in a hundred years; or the entire firm went on a cruise in the Bermuda Triangle; or perhaps they stowed away on Amelia Earhart’s plane.


14 See, e.g., Irby v. Fairbanks Gold Mining, Inc., 203 P.3d 1138 (Alaska 2009) (absentee presumed to have died when his bulldozer fell into an icy pond).


16 See, e.g., In re Rausch’s Estate, 347 N.Y.S.2d 925 (Sur. Ct. 1973) (absentee presumed to have died during aerial reconnaissance mission over Laos).


Although parental abductions of children during custody battles often qualify as absences by criminal act, further discussion of them is omitted from this bibliography. The subject is explored in detail in Child Custody and Visitation Law and Practice (Matthew Bender, rev. ed. 2015). For abductions crossing national borders, see Rhona Schur, The Hague Child Abduction Convention: A Critical Analysis (2013).


19 In 1878, cowboy John Hillmon purchased four life insurance policies worth $25,000. In 1879, he disappeared. In 1880, his wife Sallie sought to collect on the policies and produced a body to prove that Hillmon had died at a remote Kansas campsite with the ironic name “Crooked Creek.” Believing they were being hoodwinked, the underwriters refused to pay. The resulting litigation, which lasted 23 years, produced two U.S. Supreme Court opinions (Mutual Life Ins. Co. of New York v. Hillmon, 145 U.S. 285 (1892), and Connecticut Mut. Life Ins. Co. v. Hillmon, 188 U.S. 208 (1903)) and led to the adoption of what now is Rule 803(3) of the Federal Rules of Evidence (which treats as non-hearsay an absentee’s statement regarding his or her future plans). For a further discussion, see Marianne Wesson, A Death at Crooked Creek: The Case of the Cowboy, the Cigarmaker, and the Love Letter (2013).

20 A number of “how-to” books have been published to help those who want to run away. See, e.g., J.J. Luna, How to Be Invisible: Protect Your Home, Your Children, Your Assets, and Your Life (3d ed. 2012); Frank Ahearn & Eileen Horan, How to Disappear: Erase Your Digital Footprint, Leave False Trails, and Vanish Without a Trace (2010); Doug Richmond, How to Disappear Completely and Never Be Found (1996). For the techniques used to find such persons, see Carole Moore, The Last Place You’d Look: True Stories of Missing Persons and the People Who Search for Them (2011). See also Karen Shalev et al., Investigating Missing Person Cases: How Can We Learn Where They Go or How Far They Travel, 11 INT’L POLICE SCI. & MGMT. 123 (2009).
home or to avoid legal prosecution; or 5) they commit suicide. Of course, some absentees simply choose to break off communications with their friends and family, while others lose touch with them due to circumstances beyond their control, such as amnesia or mental illness.

Over the years, the legal problems posed by absentees and returnees have attracted the attention of scores of law review authors. Their work is difficult to access, however, because it is scattered across time and place. This is particularly problematic for a field that has no current organizing text. Accordingly, this bibliography collects and annotates the more notable pieces for the benefit of attorneys and judges who find themselves in the land of the undecided.

In perusing the entries that appear below (which are arranged first by topic and then by the author’s last name), it will be helpful to keep in mind the following:

(a) In antiquity, the presumption of “continuing life” required proof that an absentee was dead. In the 17th century, the English Parliament by statute reversed this presumption with respect to missing spouses and, later, missing life tenants. As a result, such persons could be declared legally dead after being absent for seven years. In 1805, Lord Ellenborough relied on these statutes to hold that any person

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21 See, e.g., In re Boyd, 723 So. 2d 1107 (La. Ct. App. 1998) (absentee left home after fight with her mother). See also “R.P.D.,” Presumption of Death From Seven Years’ Absence as Affected by Domestic Troubles, 64 A.L.R. 1288 (1930 & Supps.).

22 See, e.g., In re Starr, 128 Cal. Rptr. 2d 282 (Ct. App. 2002) (absentee presumed to be in hiding to avoid imprisonment). See also “G.R.B.,” Presumption of Death From Absence as Affected by Fact That Person was Fugitive From Justice, 44 A.L.R. 1488 (1926 & Supps.).

23 See, e.g., Ahn v. Kim, 678 A.2d 1073 (N.J. 1996) (although absentee previously had tried to commit suicide, there was insufficient proof to support plaintiff’s contention that his subsequent disappearance was due to a successful attempt). In In re Estate of Bennett, 2006 WL 1341225 (N.Y. Sur. Ct. 2006), the court initially believed the absentee had killed himself. Once his medical records were obtained, however, it became more reasonable to believe he had died from a heart condition.

24 See, e.g., In re Will of Seals, 2014 WL 980660 (N.Y. Sur. Ct. 2014) (absentee told his mother to let no one know of his whereabouts except for two specific individuals); In re Proper Family Trusts, 2007 WL 2792178, at *2 (N.Y. Sur. Ct. 2007) (denying request for declaration of death because absentee “historically has sought to live his life apart from his family, and without any contact to past friends/neighbors/business partners.”).


26 As a result, the subject continues to make do with Franz Fraenkel’s slim (80 pages) booklet Missing Persons: The Law in the United States and Europe (1950). For reviews, see Cloy D. Monzingo, Book Note, 29 Tex. L. Rev. 865 (1951); Joseph S. Roucek, Book Notes, 45 Am. J. Int’l L. 403 (1951).

27 As used herein, the term “law review” includes bar journals. Writings referring to the undecided only in passing, or published in a language other than English, are omitted.

28 See Eagle’s Case, 3 Abb. P. 218, 219 (N.Y. Sur. Ct. 1856) (tracing the rule to the Digest of Justinian and explaining that a person was presumed to survive to his or her 100th birthday in the absence of evidence to the contrary). For a further discussion, see Note, The Presumption of Life, 9 Colum. L. Rev. 435 (1909).

29 See An Act to Restrain All Persons From Marriage Until Their Former Wives and Former Husbands be Dead, 1 Jac., ch. 11 (1604).

30 See An Act for Redress of Inconveniences by Want of Proof of the Deceases of Persons Beyond the Seas or Absenting Themselves, Upon Whose Lives Estates do Depend, 18–19 Car. 2, ch. 11 (1667).
who had been missing for seven years could be declared legally dead.31 Today, most jurisdictions in the United States have both shortened this waiting period32 and allow judges to dispense with it in instances in which the absentee was exposed to a specific peril.33

(b) An absentee who reappears is often referred to as an “Enoch Arden.” As has been explained elsewhere, “Some states have ‘Enoch Arden’ laws, which provide that after a spouse has been missing for a specified period of time, the abandoned spouse may remarry and the remarriage is deemed valid. ... The laws were named after a Lord Tennyson poem published in 1864 entitled ‘Enoch Arden,’ which details the plight of a sailor who returned home after having been lost at sea for seven years to find his wife remarried.”34


32 The seven-year rule has become something of a staple in popular culture. See, e.g., Michael Craft, Flight Dreams (1997) (fictional investigative reporter Mark Manning races against the deadline to find a Chicago socialite and prevent her fortune from being seized). In “The Mysterious Cube,” a 1958 episode of the TV show Adventures of Superman (syndicated, 1952–1958), a notorious jewel thief named Paul Barton has hidden himself for nearly seven years in an impenetrable cube made out of a mysterious substance. In the story, Barton will have his brother go to court to have him declared legally dead, making it impossible for the authorities to secure him for his past crimes. When he realizes that he cannot break through the cube (or even look into it with his x-ray beam), Superman comes up with an ingenious solution:

The clock inside the [cube] runs on naval observatory time by radio from Arlington, Virginia. This gives Superman an idea.

The President of the United States and a naval admiral have approved Superman’s plan. Meanwhile, it’s 11:35 [on the morning when Barton’s seven years will be up at noon]. Paul is pouring the special acid on the cube’s inner wall [to let himself out—because of the wall’s hardness, the acid will take 30 minutes to work]. The clock has just struck 12:05. Paul Barton is free as a bird [but] Inspector Henderson has arrived to arrest Paul. The criminal believes that the [the] police can do nothing until he learns the truth. Superman had Arlington speed up its time signals. Since yesterday, Paul’s clock gained a fraction of a second every minute. When he left the cube, it was actually five minutes before noon.


In “Don’t Come Back Alive,” a 1955 episode of the TV series Alfred Hitchcock Presents (CBS/NBC, 1955–1965), another seven-year tale has an equally-unexpected twist:

[A financially-strapped couple ... scheme to have Mildred “disappear” for seven years and declared legally dead in order to collect Frank’s insurance pay-off. [The] insurance investigator Mr. Kettle ... suspects that Frank killed Mildred, and his constant hounding of Frank means that the couple cannot be in contact with each other. The night before the seven years is up, Frank is visited by Mildred, who has moved on with [her] life, and she declares that she wants a divorce and [also wants to] end the scheme. In a rage, Frank kills her and buries her in his garden. The next day Kettle apologizes to Frank for his assumption, and offers to help with his garden.


32 The Uniform Probate Code, for example, contains a five-year waiting period. See UNIF. PROBATE CODE § 1-107(5), 8 (pt. I) A. 41 (2013).

33 See supra notes 13–16 and accompanying text.

34 Brewster on Behalf of Keller v. Sullivan, 972 F.2d 898, 902 n.4 (8th Cir. 1992). Tennyson’s poem has served as the basis for numerous later works, including the movies My Favorite Wife (1940) (starring Cary Grant); “Move Over, Darling” (1963) (John Wayne); and Cast Away (2000) (Tom Hanks). Likewise, “Hi Honey, I’m Home,” a 1984 episode of the TV sitcom Night Court (NBC, 1984–1992), borrows Tennyson’s plot:

In this typically tickling episode, Russ Meyer alum Charles Napier plays a rowdy soldier who’s been in a Vietnamese prison camp for the past decade and returns home only to find out he’s legally dead and his wife has remarried. The wife can’t decide which man she wants, and Judge Stone slyly resorts to a biblical precedent in resolving the disputed matrimony.

(c) The compilers of this bibliography have used the abbreviation “UAA” to refer to the Uniform Absence as Evidence of Death and Absentees’ Property Act, a model statute promulgated in 1939 by the National Conference of Commissioners on Uniform State Laws. Although adopted in just three states, it has helped shape the rules governing absentees and returnees.

(d) The compilers likewise have used “MPT” to refer to the United Nations’ 1950 Convention on the Declaration of Death of Missing Persons. This treaty, agreed to after years of contentious negotiations, addressed some of the more pressing legal problems caused by the many persons who became absentees during World War II.

(e) A third abbreviation used by the compilers is “EDC,” which stands for the United Nations’ 2007 International Convention for the Protection of All Persons from Enforced Disappearance. Although disappearance due to a criminal act usually comes at the hands of individuals, governments sometimes target certain types of individuals (e.g., journalists, political dissidents, and religious minorities) for “enforced disappearance.” The EDC condemns such campaigns as crimes against humanity.

(f) Lastly, the abbreviation “LAR” in this bibliography means “law[s] of absentees and returnees.”

**General Works**

   
   Article describing the LAR in the United States. The author is highly critical of the presumption that a person missing for seven years is dead, describing it as the by-product of “stop-gap statutes.”

   
   Comment discussing the LAR in the United States. The author pays particular attention to the various presumptions that are used to determine whether an absentee is still alive.

3. Comment, *Judgments Based on Presumption of Death as Affecting an Absentee’s Rights*, 27 Yale L.J. 943 (1918)
   
   Comment examining whether a debtor who makes payment to a third party based on an absentee’s presumed death due to prolonged absence can be held liable when the absentee reappears. According to the author, the debtor is liable to the returnee except in *in rem* and *quasi-in rem* cases.

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36 To varying degrees, Tennessee and Wisconsin still use the UAA. See Tenn. Code §§ 30-3-101 to 30-3-210; Wis. Stats. §§ 813.22-813.34. Maryland adopted the UAA in 1941, see infra Item 30 of this bibliography, but repealed it in 1973. See William H. Adkins II, *Code Revision in Maryland: The Courts and Judicial Proceedings Article*, 34 Md. L. Rev. 7, 23—25 (1974). Because its statute, adopted in 1965, is modeled after the UAA, North Carolina is sometimes considered a fourth UAA jurisdiction. See infra Items 53 and 54 of this bibliography.


Article summarizing the LAR in the United States. The author calls on states to adopt the UAA to provide a modern regime for dealing with the legal problems posed by absentees and returnees.

5) Harry P. Lawther, *Uniform State Laws*, 4 DALL. B. SPEAKS 255 (1939)

Article recounting the UAA’s drafting history. The author, who helped write the statute, details how Professor Wigmore’s views shaped the final product.


Article explaining what happens to an absentee’s assets during the period between his or her disappearance and a judicial declaration of death. The author argues that states need to increase the powers of property administrators to ensure that an absentee’s family does not suffer needless deprivation.


Article cataloging how courts determine whether an absentee is dead. The author argues that “[w]hen reasonable probability of death is shown by the evidence, everything however slight, which tends to strengthen the former evidence, such as the habits of the party, condition when last seen, etc., should be received in evidence.”


Note surveying the LAR in the United States. The author points out that “despite the seemingly obvious desirability of absentee estate laws, the development of legislation in this field has been neither rapid nor architectonic. Less than half the jurisdictions in the United States have dealt with the problem.”


Note analyzing the third draft of the UAA. The author concludes: “The purpose and several features of the proposed act deserve commendation. But it is to be hoped that the defects noted above will be rectified before the statute is placed in its final form, so that the opportunity of contributing a codification of even greater value will not be dissipated.”


Note discussing how American courts determine the date on which an absentee died. The author argues in favor of “[t]he English doctrine[,] as adopted by many of the American courts, viz., that there is no presumption of life or of the time at which death occurred [because it is] the soundest on principle, reason, and justice.”


Report on the LAR in the United States. The authors “suggest[] that (1) the newly enacted statutes of Kansas and Colorado … be studied; (2) the problems raised by the committee for improvement of statutes pertaining to missing persons be further explored by a sub-committee of this committee; (3) the problems and suggestions raised by this committee be forwarded to the committee of this section studying the Model Probate Code; and (4) the statutes in New York and Oregon be particularly studied in view of possible revisions projected.”


Article examining the validity of acts undertaken by an administrator when an absentee, who was presumed dead at the time of the administrator’s appointment, reappears. The author criticizes the majority rule, which makes the administrator’s acts void, because “[t]o say … that the court has only power to issue letters of administration on the estate of deceased persons, is as fallacious … as to say that the court has only power to render a judgment on a just claim.”
STATE-SPECIFIC WORKS

A. California

   Article discussing recent changes to California’s probate code. The author predicts that the state’s new LAR will be found unconstitutional because it does not do enough to protect the property rights of absentees.

   Case note on *Sevier v. Bank of America*, 225 P.2d 3 (Cal. Ct. App. 1950). The plaintiff demanded payment from a bank holding funds in trust for an absentee. The bank refused, arguing that California’s method for giving notice to absentees (publication) was unconstitutional. Finding due process satisfied, the court ordered the bank to turn over the money. Although recognizing that publication is “probably futile,” the author concludes that no better alternative exists.

   Article outlining California’s LAR as it applies to missing service members. The author points out that “[c]onventional proceedings to probate the estate of a person *adjudged* dead on such evidence [i.e., reports of death in combat] would not be binding upon that person should he afterwards reappear.”

   Legislative update describing recent changes in California’s LAR. According to the authors, the revisions “permit[] the appointment of a conservator for the estate of a missing person; decrease[] the length of time giving rise to a presumption of death for a missing person; expand[] the rights of recovery of property for reappearing missing persons; [and] add[] procedures for absent federal personnel.”

B. Connecticut

   Article exploring whether Connecticut’s courts will recognize foreign country declarations of death. The authors predict they will “if there is no contradictory evidence and if notice has been given to the absentee by publication.”

   Case note on *Potter v. Prudential Insurance Co.*, 142 A. 891 (Conn. 1928). In 1909, an unemployed machinist left Connecticut to look for work in Dayton, Ohio and was not heard from again. In 1924, his wife sought to collect on his life insurance policy. The insurer refused to pay, arguing the wife had failed to conduct a diligent search for her husband and had waited too long to bring her lawsuit. The trial court ordered the insurer to pay $7,000. On appeal, the Connecticut Supreme Court reduced this amount to $2,000. While agreeing that the wife’s right to sue expired in 1923, it held the insurer had partially revived the policy in 1925 by promising to pay $2,000 if the wife submitted satisfactory proof that her husband could not be located, which she did. The author notes that in many jurisdictions the question of whether the husband died before the policy lapsed would have been referred to a jury.

C. Florida (see also Item 163)

   Note predicting how Florida’s courts will rule if called on to determine whether an absentee died before or after his or her life insurance policy lapsed. The author believes they will side with beneficiaries, thus forcing insurers to be more open to settlements. The author recommends insurance companies protect themselves by requiring beneficiaries to post a bond before being paid.
Article describing the author’s search for a husband who disappeared in upstate New York. Using IRS records, the absentee was located in Florida living with a new, much younger wife.

**Georgia (see also Item 160)**

Article outlining Georgia’s estate administration procedures. Among the subjects covered are the handling of absentee estates, which the author believes suffer from the fact “that there can be no effective disposition of the property until there has been a specified period of unexplained absence, ranging from one to seven years.” The author calls such waiting periods “arbitrary” and blames them for putting heirs to the difficult choice of either a “long delay or the giving of a bond which will continue in operation more or less indefinitely.”

Article reviewing Georgia’s new probate code. The authors praise the legislature for streamlining the state’s LAR and ending the “confusing combination of provisions for the administration of the estates of individuals who were presumed to be dead and the management of estates for individuals who were missing.”

**Hawaii (see Item 164)**

**Idaho**

Case note on *Gaffney v. Royal Neighbors of America*, 174 P. 1014 (Idaho 1918). A woman disappeared while rowing her boat across the Coeur d’Alene River. Seven years later, while probating their mother’s estate, the woman’s sister sought to collect on a life insurance policy the woman had purchased. The insurer, a fraternal society, refused to pay, relying on one of its by-laws that abolished the presumption of death based on prolonged absence. The trial court found for the sister. On appeal, the Idaho Supreme Court affirmed and held that a private party cannot change the rules of evidence. The author disagrees with the decision because the by-law does not “give the insurance compan[y] such undue advantages over individuals as to render the by-law void as against public policy.”

**Illinois (see also Items 158 and 159)**

Case note on *Eddy v. Eddy*, 134 N.E. 801 (III. 1922). After an absentee was declared dead, land that had been left to him by his father was transferred to his siblings, who contracted to sell it to third parties. Before the sale could be completed, the absentee returned and petitioned the trial court to void the transfer, which it did. On appeal, the Illinois Supreme Court affirmed and held it was error not to take into account the possibility that the absentee would reappear. The author agrees with the result.

**Iowa**

Case note on *Haines v. Modern Woodmen of America*, 178 N.W. 1010 (Iowa 1920). After her son had been missing for eight years, the plaintiff sought to collect on his life insurance policy. The insurer, a fraternal society, refused to pay, relying on an amendment to the contract that had abolished the
presumption of death from prolonged absence. The trial court found for the plaintiff. On appeal, the Iowa Supreme Court affirmed, holding that while the insurer had reserved to itself the right to issue amendments, a change to the rules of evidence required the insured’s consent. The author believes “the instant case is sound, and represents the weight of authority.”

I. Kansas

26) Note, Death—What Evidence is Sufficient to Give Rise to Presumption of Death From Unexplained Absence, 62 CENT. L.J. 255 (1906)

Case note on Modern Woodmen of America v. Gerdom, 82 P. 1100 (Kan. 1905). By the time the plaintiffs sued the insurer, a fraternal society, they had not heard from their son in nine years. The Kansas Supreme Court held this did not prove he was dead, especially considering that the last time the plaintiffs saw their son he was getting ready to leave on a trip and told them “he intended to stay in California, at least for some time, because he liked it there[.]” The author commends the court for not being swayed by the case’s facts and argues it is always “necessary for the plaintiff, attempting to prove the death of a certain person on the presumption that arises from his unexplained absence, to exhaust every avenue of inquiry and show positively that no one likely to have heard from the party supposed to be dead has heard from him within the required time.”

J. Kentucky

27) Thomas J. Knight, Disappearance Cases in Kentucky: Some Aspects of Presumptive Death, 6 Ky. ST. B.J. 27 (Dec. 1941)

Article providing a practical description of Kentucky’s LAR. The author, a trial court commissioner, explains that most of the lawyers who have appeared before him are confused “as to the application of [Kentucky’s] seven years absence statutes” and believe “that if one of the heirs to an estate, or the owner of an interest in the real estate, has been absent from this state and unheard from for more than seven years he can be declared legally dead ... thus eliminating him as an heir or an owner of an interest so as to allow the remaining heirs to ‘short-circuit’ around him[.]” The author advises that “before the interest of the absent one can be distributed among the other known heirs there must be proof which would justify the Court in finding that the absent one is dead, and that he died unmarried, intestate and without issue.”

K. Louisiana


Comment discussing how the inheritances of an absentee are to be distributed under Louisiana law. The author points out that two different answers to this question are possible, with one treating the absentee as if he or she had pre-deceased his or her heirs and the other pretending that the absentee, and thus his or her heirs, were never born. To avoid denying the heirs of absentees what is rightfully theirs, the author calls on the Louisiana legislature to amend the law to eliminate the second possibility.


Article delving into Louisiana’s distinctive LAR. After describing its provisions (which are descended from the Code Napoleon and differ greatly from the common law), the author discusses a proposal by the Louisiana State Law Institute to streamline the law and add a presumption of death (thereby eliminating the Code’s indeterminacy, which has proven problematic and led to inconsistent results). In a postscript, the author advises readers that the legislature has adopted the Institute’s proposal effective January 1, 1991.

L. Maryland

30) Comment, Statutory Solution of Uncertainty as to Fact and Time of Death—Lachowicz v. Lechowicz, 7 MD. L. REV. 330 (1943)
Case note on *Lachowicz v. Lechowicz*, 30 A.2d 793 (Md. 1943), a case arising from the death of a Baltimore intestate. Applying the state's recently-enacted version of the UAA, the Maryland Court of Appeals decided that the estate's funds should be deposited with the Baltimore City Register of Wills so as to give the competing claimants (including the representative of a foreign absentee) time to establish their respective inheritance rights. The author describes the case as "afford[ing] an interesting opportunity to [examine the] legal propositions that have arisen out of a groping for devices to solve uncertainty as to the fact and time of death."

**Massachusetts**

31) Marie Munk, *Do We Need Better Enoch Arden Laws?*, 19 B. Bull. 270 (1948)

Article discussing Massachusetts' Enoch Arden statute. The author believes it is inadequate and urges the state's lawyers to come up with a new one after looking at what other jurisdictions have done.


Case note on *Blinn v. Nelson*, 222 U.S. 1 (1911), which upheld a Massachusetts statute allowing property owned by absentees to be conclusively sold after 14 years. The author praises the statute for its "comprehensive simplicity" and the fact "it applies expressly to both real and personal property."

**Michigan**


Case note on *Griffin v. Northwestern Mutual Life Insurance Co.*, 229 N.W. 509 (Mich. 1930). An engineer disappeared after boarding a New York steamer bound for Boston. Seven years later, his wife sought to collect on his life insurance policy, but the insurer, believing he might still be alive, refused to pay. The trial court entered a directed verdict for the insurer, but the Michigan Supreme Court reversed, holding that whether the absentee was dead and when he died were questions for the jury. The author takes issue with the view "that the presumption of death may enable the jury to find the date of death," arguing that while "well supported by authority ... the rule ... is not sound in theory."


Student paper reviewing recent changes to the Michigan probate code making it easier to dispose of assets belonging to absentees. The author, although praising the legislature for "passing this much needed piece of modern legislation," wonders "whether the statute will revive the ancient learning on civil death, and send the twentieth century advocate back to the Abridgements of Viner and Bacon, and the Commentaries of Littleton and Coke."

**Minnesota**


Article reviewing Minnesota's LAR. The author calls on the Minnesota legislature to pass a "bill embodying the best features of the statutes of other states" to "simplify the solution of problems which most lawyers in active practice have encountered or will encounter sooner or later."

**Nebraska (see Items 157 and 182)**

**New Jersey**


Case note on *Hamilton v. Orange Savings Bank*, 124 A. 62 (N.J. 1924). An absentee reappeared after 23 years and demanded his money from the defendant bank, which refused because it already had paid the funds to the absentee's executor. The trial court accepted the bank's explanation, as did the appeals
court. The author calls the result "just" because it protects innocent third parties. (*Compare Item 38 of this bibliography.*)

37) Note, *Proof of Death Following Absence of Less Than the Statutory Seven Year Period*, 3 *Rutgers L. Rev.* 266 (1949)

Note tracing the development of New Jersey’s LAR. The author argues that while New Jersey’s use of the presumption that a person absent for seven years has died "may have been an apt solution to the problems of the seventeenth century, the passage of time and the advances of civilization have made its utility to present day situations questionable." The author concludes there "is a need for change and ... [w]orthy of consideration is the [UAA]."

38) E.W. Puttkammer, Note, *Administration—Jurisdiction of a Probate Court Where Supposed Decedent is in Fact Alive*, 19 *Ill. L. Rev.* 275 (1924)

Case note on *Hamilton v. Orange Savings Bank*, 124 A. 62 (N.J. 1924) (*see Item 36 of this bibliography for a description of the lawsuit*). The author criticizes the result as a "throw-back" that fails to adequately protect the property rights of absentees.


Legislative update on a new statute (Ch. 467, 1983 N.J. Sess. Law Serv. 2639) requiring the New Jersey Division of State Police to establish a missing persons unit to aid local law enforcement officials. While commending lawmakers for being pro-active, the author concludes that the "law does not solve the problem of the highly mobile kidnapper or murderer who roams from state to state. Indeed, one state’s law cannot truly be effective until there is a mandatory national computer system requiring every state to participate."


Article examining the development and current status of New Jersey’s LAR. The author recommends that before declaring a person dead because of absence, a court should conduct "as complete and satisfactory an investigation as may be possible."

**R. New York (see also Item 132)**


Article describing how courts have interpreted New York’s Enoch Arden law. The author predicts that the New York legislature "will ultimately be constrained to proscribe some of the legal roadblocks which have crept into the judicial construction of the Enoch Arden disappearance statute."


Article reporting on two special procedures (one legislative and the other administrative) being utilized by New York to handle the large number of presumption of death cases arising from the 9/11 attacks. The author urges attorneys to become familiar with both to ensure that clients receive their loved ones’ death certificates as quickly as possible.


Student article tracing the evolution of New York’s Enoch Arden law. The author argues that it should not be "necessary for a remarriage based upon the common law rule of continued absence and presumption of death" to have to be preceded by a dissolution of the first marriage to be valid.


Case note on *McNulty v. Mitchell*, 84 N.Y.S. 89 (Sup. Ct. 1903). Following a partition sale, the buyer refused to go through with the purchase because there was no proof that the absentee owner, who had been missing for 43 years, was dead. Based on the evidence, the trial court granted the plaintiffs’ request for specific performance. The author points out that while "it is a settled rule of law that a purchaser will not be compelled to take a doubtful title there is some conflict as to what degree of doubt will relieve the purchaser."
45) Note, Decedents’ Estates—Letters of Administration Issued on the Estate of a Living Person, 41 COLUM. L. REV. 744 (1941)

Case note on In re Clemens’ Estate, 22 N.Y.S.2d 168 (Sur. Ct. 1940). In 1933, Lee was named Clemens’ administratrix. According to Lee, Clemens died intestate in 1927. In 1940, Clemens (acting through a friend to whom she had given a power of attorney) petitioned to have Lee removed as administratrix. After determining that Clemens was alive and Lee had committed fraud, the court revoked Lee’s letters of administration and ordered her to make an accounting. The author calls on states to increase the protection given to absentees.


Case note on In re Rowe’s Estate, 170 N.Y.S. 742 (Sur. Ct. 1918). In an earlier case (see Item 48 of this bibliography), a Manhattan surrogate, relying on actuarial tables and the family’s longevity history, found that a missing brother (Thomas) had died in 1916, thereby briefly surviving another brother (William, who died in 1915). Rejecting this conclusion, a Bronx surrogate held that Thomas died in 1901, seven years after his relatives last heard from him. The author finds this decision to be sound.

47) Note, Presumptions—Existence and Effect of Presumptions in Particular Cases—Death After Seven Years, 26 HARV. L. REV. 378 (1913)

Case note on In re Benjamin, 137 N.Y.S. 758 (Sur. Ct. 1912). In settling the estate of one sister (Anna), the court was asked to presume that another sister (Bridget), who had not been heard from in 39 years, was both dead and had predeceased her sister. Finding a lack of evidence to support these presumptions, the surrogate’s court declined to so hold. The author criticizes this result, which was overturned on appeal (see In re Benjamin, 139 N.Y.S. 1091 (App. Div. 1913)).

48) Note, Presumptions—Presumption of Death From Seven Years’ Absence Without News—Substitution of Actuarial Table, 30 HARV. L. REV. 654 (1917)

Case note on Goods of Thomas Rowe, 56 N.Y.L.J. 1669 (Sur. Ct. 1917). In a proceeding for letters of administration, the question arose whether the absentee (Thomas) had survived his brother (William, who died in 1915). Thomas had been born in 1842, had abandoned his children (the petitioners) in 1872, and had not been heard from since 1894. Relying on mortality tables as well as the family’s longevity history, a Manhattan surrogate decided that Thomas briefly outlived his brother. The author finds this conclusion questionable: “[T]he court is correct in claiming that the mortality tables can raise two presumptions: that Thomas lived to 1916, and that Thomas is now dead. But if the burden of proof were that Thomas died between 1916 and [1917], that is, if this were one claim, then though the tables show that a majority of fifty-two year olds in 1894 will have survived 1916, but not [1917], ... only a very small minority will have died between [1916 and 1917].” (For a further discussion, see Item 46 of this bibliography.)

49) Note, Specific Performance—Defenses—Effect of the Presumption of Death Upon Marketability of Title, 27 HARV. L. REV. 768 (1914)

Case note on Cerf v. Diener, 104 N.E. 126 (N.Y. 1914). A buyer declined to complete a purchase because an absentee, who had been missing for 25 years, held a right to tenancy by curtesy. The seller sued for specific performance and the matter was submitted to the Appellate Division as an “agreed case.” It found for the plaintiff, but the Court of Appeals reversed because the lawsuit should have been filed as a plenary action. The author believes that on the merits, the seller should lose if “the only evidence be unexplained absence,” given that “the age of the absentee [72], if living, would not be beyond belief.”

50) Howard W. Roth, Comment, A Review of the Presumption of Death in New York, 26 ALB. L. REV. 231 (1962)

Comment regarding New York’s LAR. The author argues that the state’s seven-year waiting period should be replaced with a flexible test in which “[t]he length of absence [is] weighed with all the other facts concerning the absentee’s disappearance[.]”
Student article analyzing New York’s LAR. The author believes the state’s laws would benefit by updating the provisions governing returnees and their property.

Legislative update about a recent change to New York’s LAR. According to the authors, “The amendment authorizes the court to consider not only the immediate circumstances of disappearance but also the broader circumstances of the absentee’s behavior, including his habits prior to his disappearance and the fact that a diligent search has failed to discover evidence that the absentee is alive.”

**S. North Carolina**

Article describing North Carolina’s 1965 revision of its LAR, in which the writer played a leading role. The author argues that the law is an improvement over the previous one for three reasons: “[I]ts conciseness, its definitiveness as to procedures to be followed, and especially because of its meticulous adherence to the constitutional requirements of notice to the absentee and the preservation of his property.”

Comment discussing North Carolina’s new LAR. The authors conclude that “the recently enacted North Carolina act appears to be the most satisfactorily equipped statute to date. ... It is suggested that older statutes [in other jurisdictions] which appear inadequate in light of modern conditions might efficaciously be revised along the lines of the North Carolina statute.”

**T. Ohio**

Article providing an overview of Ohio’s LAR. The authors are critical of it and argue that the state’s “absentee statute should be rewritten and its provisions incorporated into a revised Presumed Decedent’s Law which treats the issues relating to missing persons in a uniform and comprehensive manner.”

**U. Oklahoma**

Report on the status of uniform laws in Oklahoma. In regards to the UAA, the authors write: “Not adopted; 58 Okla. Stat. (1951) §§ 941–946 seem adequately to cover the subject.”

**V. Oregon (see Item 162)**

**W. Pennsylvania**

Case note on *Londrino v. Equitable Life Assurance Society of the United States*, 105 A.2d 333 (Pa. 1954). A jury concluded there was insufficient proof that the absentee, a steelworker, was dead. On appeal, the Pennsylvania Supreme Court ordered a new trial because the evidence overwhelmingly suggested the absentee died in an industrial accident. The author walks the reader through the case’s lengthy proceedings, relying heavily on excerpts from the record.

58) Meredith Hanna, *Administration Upon Estates of Persons Presumed to be Dead*, 62 U. Pa. L. Rev. 605 (1914)
Article outlining the procedures followed by Pennsylvania in handling the estates of absentees and returnees. The author claims the state has the nation’s “most complete system of settling [such] estates.”

59) A.J. White Hutton, *Death as a Jurisdictional Fact Before the Register of Wills and the Orphan’s Court in Pennsylvania*, 53 DICK. L. REV. 108 (1949)

Article describing Pennsylvania’s LAR. The author finds the law unsatisfactory and calls for changes to make it easier to wind up the affairs of absentees while still assuring their rights to notice and due process.

60) Lewis H. Van Dusen, Jr., *Procedure to Perfect Titles Involving Rights, Actual or Potential, of Persons Absent and Unheard Of*, 16 TEMP. L.Q. 263 (1942)

Article examining the marketability of Pennsylvania properties owned by absentees. The author calls on the legislature to “provide for the disposal of real estate upon the finding of fact that it has been abandoned, which finding can be based upon a reasonable period of continued absence, or upon a finding of death.”

**Rhode Island**

61) Note, *Administration of the Estate of a Supposed Dead Man*, 11 HARV. L. REV. 264 (1898)

Case note on *Carr v. Brown*, 38 A. 9 (R.I. 1897), which held that the return of an absentee invalidates a probate court’s order authorizing administration of his or her estate. The author agrees with the decision because it is “clear that the Fourteenth Amendment makes it impossible to hold valid any administration of the estate of a living man.”

**South Carolina**


Case note on *Ligon v. Metropolitan Life Insurance Co.*, 64 S.E.2d 258 (S.C. 1951). The plaintiff sought to collect on an absentee’s group life insurance policy. The company refused to pay, arguing there was no proof the absentee was dead. The trial court entered judgment for the company, but on appeal the South Carolina Supreme Court reversed, holding that whether the absentee was dead and, if so, whether he died before the policy lapsed were questions for the jury. The author describes the holding as being “in accord with the modern trend. ... [The b]urden should be on the defendant to prove that the absentee still lives. ...”

**Tennessee**


Column discussing *Armstrong v. Pilot Life Insurance Co.*, 656 S.W.2d 18 (Tenn. Ct. App. 1983). After being spurned by his mistress, a married man disappeared. Six years later, his wife sought to collect on his life insurance policy. When the company refused to pay, the wife sued but lost because there was insufficient evidence that her husband was dead. The author points out that due to a 2001 change in Tennessee’s LAR, the wife now would most likely win.

**Texas**

64) Grady Barrett, *Administration of Estates of Missing Persons*, 7 TEX. B.J. 396 (1944)

Article describing Texas’ LAR as it applies to missing service members. The author predicts that “[i]n the county courts of Texas will no doubt be petitioned in numerous instances for letters testamentary or of administration upon the estates of soldiers and sailors who are reported by the War or Navy Departments as ‘missing’ where direct or positive proof of death is unobtainable due to war conditions.”

Report on Texas' LAR. The authors call the common law rule that a person must be missing for seven years before being declared dead “arbitrary” and in its place propose “that up to and including the age of fifty-two years the period of unexplained absence which should create a presumption of death be fixed at one-half of the absentee’s life expectancy; and that after the age of fifty-two years, the period be fixed at one-third of his life expectancy.”


Article providing guidance to Texas lawyers retained to represent the families of MIA service members. Among the topics covered are estate taxes, life insurance, Social Security benefits, and wills.


Case note on *American National Insurance Co. v. Hicks*, 35 S.W.2d 128 (Tex. Comm. App. 1931). After not hearing from her husband for seven years, an absentee’s wife sued to collect on his life insurance policy. The insurer argued, without success, that the suit was time-barred and that the wife’s failure to keep up the premiums had caused the policy to lapse. As the author points out, while jurisdictions typically toll the statute of limitations until the statutory period has run, they are split as to whether the date of death is to be determined by the court (as in Texas) or is automatically considered to have occurred at the end of the statutory period.


Note reviewing Texas’ procedure for probating self-proving wills. In discussing Texas’ LAR, the author points out that “[a] presumption of death may be raised other than under the seven year statute. Such a situation may arise where the missing person is suffering from a serious disease, or was exposed to a serious peril after he was missing from his domicile.”

**BB. Virginia**


Case note on Selden’s Executor v. Kennedy, 52 S.E. 635 (Va. 1906), which held that an absentee who returns to discover his or her land has been sold can sue the estate’s executor. The author considers the decision to be correct because no notice was given to the absentee.

**CC. Washington**


Case note on *In re Nelson’s Estate*, 224 P.2d 347 (Wash. 1951). After an incompetent had been missing for seven years, his family moved for the appointment of an executor to distribute his assets. The trial court granted the petition but the Washington Supreme Court reversed because there was insufficient proof the absentee was dead. The author criticizes this decision, arguing that “the [Supreme Court] has gone further than [is] require[d]. The court seems to have gone into the legislative field in refusing to probate the estate on the presumption of death arising from seven years’ absence. There is no legislative mandate that the presumption is not adequate for this purpose.”

**DD. Wisconsin**

71) Karl Drechsler, *Absentee’s Property Act*, 1942 Wis. L. Rev. 280

Article describing Wisconsin’s new LAR. The author explains that it is “substantially identical” to the UAA and calls its adoption “particularly timely, because in war time the possibilities of persons being absent for extended periods, with their fate uncertain, are greatly increased.”
72) Note, Evidence—Presumption of Death—Seven Years’ Absence, 2 Harv. L. Rev. 189 (1888)
Case note on Whiteley v. Equitable Life Assurance Society of the United States, 39 N.W. 369 (Wis. 1888). Eleven years after a traveling salesman disappeared, suit was brought to collect on his life insurance policy. The trial court charged the jury that unless there was proof to the contrary, it should assume the absentee died at the end of the seven year statutory period. The jury so found and judgment was entered for the insurer. On appeal, the Wisconsin Supreme Court reversed and remanded for a new trial, explaining that the jury should have been allowed to make its own determination as to whether death occurred before or after the policy lapsed. The author applauds the decision as being in line with other cases “overthrowing the old doctrine that there is a presumption of life until the end of the seven years.”

73) Wyoming
Sterling Case, Note, Belief in Death of Absent Consort as a Defense to a Charge of Bigamy, 10 Wyo. L.J. 158 (1956)
Note analyzing the status of Enoch Ardens in Wyoming. Finding no cases on point, the author warns “that one remarrying within the Wyoming statutory period of seven years, believing, but not knowing, that the former spouse was in fact dead, would do so at his peril so far as concerns the crime of bigamy.”

74) Aviation Law
Robert M. Jarvis, Vanished Planes, 10 FIU L. Rev. 519 (2015)
Survey of cases involving mysterious airplane disappearances. The author discusses approximately 60 such decisions, which are grouped into the following categories: causation; choice of law/forum; statutes of limitation; claims; judgments; and taxes.

Note examining when persons who go missing while traveling in airplanes should be declared dead. The author argues “that where the facts permit the application of the doctrine of specific peril, the general presumption of death is not relied on, and the action should lie immediately after the presumed date of death.”

76) Comparative, Foreign, and International Law (see also Footnote 40)
Article tracing the drafting history of the EDC. As the author points out, the convention applies only “to enforced disappearances perpetrated or supported by state agents, [thereby] allowing non-state agents to evade international criminal responsibility.”

77) Anonymous, Presumption of Death After Seven Years, 5 Fortnightly L.J. 280 (pt. 1), 295 (pt. 2), 312 (pt. 3) (1936) and 6 Fortnightly L.J. 9 (pt. 4), 24 (pt. 5), and 43 (pt. 6) (1936)
Article about Canada’s LAR. The author argues the seven year rule has “limited utility” and “[j]ustice requires all the evidence to be weighed before judgment.”

Article examining the experiences of 26 children who disappeared during El Salvador’s civil war (1979–1992) but later were found and reunited with their biological parents. The authors explain that many of the youngsters had trouble adjusting to their former identities.
Note describing the enforced disappearance of Chechens by Russian military forces. The author believes the involvement of the European Court of Human Rights has improved the situation by prompting Russia “to implement some military and administrative reforms.”

Article examining the increasing use of systematic disappearances to eliminate political opponents. The authors suggest that a transnational approach is required to address such acts.

81) W. Breslauer, Foreign Presumptions and Declarations of Death and English Private International Law, 10 Mod. L. Rev. 122 (1947)
Article exploring whether English courts will presume the deaths of foreign nationals missing as a result of World War II. The author spends considerable time discussing England’s LAR and the differences between it and the civil law.

Article comparing how enforced disappearance cases are handled by the European Court of Human Rights and the Inter-American Court of Human Rights. The author finds that the latter court is much more vigorous in enforcing the EDC.

Article examining enforced disappearances in Colombia. The author calls for close cooperation between the Inter-American Court of Human Rights and the International Criminal Court to combat the problem.

Article describing England’s LAR and comparing it to a number of other jurisdictions, including France, Germany, Russia, and the United States. The author pays particular attention to how such laws are applied in mass disasters.

85) J.E.S. Fawcett, Convention on Declaration of Death of Missing Persons, 3 Int’l L.Q. 446 (1950)
Article on the drafting history of the MPT. The author explains that due to differences between civil law and common law countries, Articles 4 (“Date of Death”) and 5 (“Effect of Declarations of Death”) proved “exceedingly difficult to draft.”

Note discussing the EDC and past examples of enforced disappearances by governments. The author argues that although the United States is not a party to the EDC, it can still be prosecuted for enforced disappearances conducted as part of the War on Terror because “enforced disappearance has long been a war crime as well as a crime against humanity under customary international law.”

87) Andrew Friedmann, Declarations of Death—A New International Convention, 25 St. John’s L. Rev. 18 (1950)
Article profiling the MPT. Although recognizing its limitations, the author believes it is an important step in addressing the problems of persons who disappeared in World War II and predicts it will help solve “long-delayed problems of marriage, adoption, and property.”

Article spotlighting the increasing number of African and Middle Eastern immigrants who disappear while attempting to illegally enter the European Union by ship. The author believes “international
procedures [are needed] to establish and protect identity in the case of migrant loss and death. Technologies now exist which can solve many of the practical challenges of recording migrant deaths: it is important that European states and civil society begin a discussion with countries of origin, to consider how to use them in the case of migrant frontier deaths."


Note on Judge Baltasar Garzón’s decision to prosecute General Francisco Franco and his generals for the 100,000 enforced disappearances they ordered in Spain between 1936 and 1975. The author fears the effort faces “insurmountable” jurisdictional obstacles.


Article comparing extraordinary rendition and enforced disappearance. The author concludes that “[p]eople [are] disappear[ing] for] lengths at a time for innocent acts such as political activism, their ethnicity, and mistaken identities.”

91) Tariq Hassan, The Supreme Court of Pakistan and the Case of Missing Persons, 10 ASIA-PAC. J. HUM. RTS. & L. 23 (2009)

Article analyzing what the Pakistani Supreme Court can do to combat enforced disappearances. The author calls on it “to not only discover the whereabouts of the missing persons but also to ensure the restoration of the constitutional rights of security of the person and protection of the law through impartial and fair trials in accordance with established legal procedures.”


Article describing the legal proceedings that arose when an individual appeared in the Yemeni village of al-Mawāhib in 1791 claiming to be Muhammad Husayn, a man who had disappeared 20 years earlier. As the author explains, after three trials the returnee was determined to be an impostor named Ahmad Sa’sa’a, a barber from Sha’sān.


Article challenging the United States’ policy of disappearing suspected terrorists into Cuban detention camps. The author believes the government has committed “grave human rights violations” and laments the fact that courts to date have been unwilling to hold it accountable.

94) Chris Jenks, Introductory Note to European Court of Human Rights (Grand Chamber): Varnava and Others v. Turkey, 49 INT’L LEGAL MATERIALS 358 (2010)

Case note on Varnava v. Turkey (Eur. Ct. Hum. Rts. 2009), which held that Turkey has a continuing obligation to search for Greek Cypriot nationals who disappeared during its 1974 invasion of the island. The author predicts “both future applicants and future respondent governments will rely on the varying and at times competing rationales underpinning the Varnava judgment to advance their respective causes in future disappearance cases before the ECHR.”

95) D. St. L. Kelly and J. Varsanyi, Declarations of Death: Reappearance and Status, 20 INT’L & COMP. L. Q. 535 (1971)

Article examining the extent to which Australian and English courts recognize foreign country declarations of death involving missing persons. The authors point out that owing to differences between the civil law and the common law, numerous problems can arise, although as a practical matter the courts have avoided them by focusing on the interests of the parties.


Note on enforced disappearances in Latin America. The author believes that “only a reordering of the political and economic structures of Latin American societies will end [such] disappearances.”

Article detailing how the United Nations became cognizant of the problem of enforced disappearances. The authors call on the Secretary-General to "use[] his good offices and his immense influence to focus on the problem of disappearances and to assure that governments cooperate with the [UN] Working Group on Enforced or Involuntary Disappearances."


Article tracing the evolution of the EDC. The author argues that the CIA’s use of extraordinary renditions in the War on Terror should be considered enforced disappearances.


See description under Item 17.

100) G.F. Peter Mason, *A Matter of Life and Death*, L.J., June 8, 1956, at 359

Case note on *Chard v. Chard*, [1955] 3 W.L.R. 954. During divorce proceedings, a question arose whether the husband’s first wife, whom he had married in 1909, was still alive when the parties wed in 1933. Although the husband claimed he had not heard from his first wife since 1917, the evidence of whether she was alive or dead was inconclusive. Applying the presumption of continuing life, the court held that the second marriage was a nullity because the husband was still married to his first wife. The author praises the decision for “tak[ing] the matter away from the realm of concrete rules and into the realm of common-sense inferences or deductions from the whole of the evidence[.]” (Compare Item 102 of this bibliography.)

101) Juan E. Mendez and Jose Miguel Vivanco, *Disappearances and the Inter-American Court: Reflections on a Litigation Experience*, 13 HAMLIN L. REV. 507 (1990)

Article discussing three recent enforced disappearance decisions issued by the Inter-American Court of Human Rights involving the government of Honduras. While praising these rulings, the authors argue that the Court’s procedures are too cumbersome to be effective and should be reformed to ensure “a dynamic and aggressive search for the truth.”


Case note on *Chard v. Chard*, [1955] 3 W.L.R. 954 (see Item 100 of this bibliography for a description of the lawsuit). The author calls on the appellate courts to provide clearer guidance on the presumptions to be applied to absentees.


Article discussing Canada’s LAR, with particular attention paid to the law of Ontario and the handling of life insurance claims. According to the author, “If there is an explanation for dropping out of sight or avoiding contact, the presumption [of death by absence] may not prevail. In other words, it is mysterious disappearance, not simply disappearance, which must be demonstrated.”

104) Note, *Comparative Law—Switzerland—Death of Polish National, Deported by Germans, Established by Decree of Swiss Court After Five Years’ Absence*, 62 HARV. L. REV. 1064 (1949)

Case note on a recent decision by a Swiss court holding that due to the passage of time, a non-resident absentee most likely had been killed by the Nazis. Had the court refused to issue the declaration, the petitioner would have been unable to collect a Swiss inheritance. The author believes that a common law court would have had difficulty reaching a similar result.

105) Note, *Presumptions—Death After Seven Years—Declarations Against Interest*, 18 HARV. L. REV. 471 (1905)
Case note on *Wills v. Palmer*, (1905) 53 W.R. 169 (Ch. D.). A bankrupt solicitor (Baker) disappeared in 1896. Subsequently, during a lawsuit over a mortgage, a question arose as to when one of Baker’s clients (Olley) took possession of a particular piece of property. To prove that Olley took possession in 1892 rather than in 1881, the defendant (Palmer) asked the court to presume Baker was dead and to allow his files into evidence. Finding that Baker had been missing for more than seven years, the court granted both of Palmer’s requests. The author criticizes the decision, arguing that the court has “circuitment[ed] the prevailing doctrine that declarations against interest are admissible only after the declarant’s death. … It would seem more logical to apply the presumption of death uniformly, and either reject the evidence entirely, or, on analogy with similar cases, extend the doctrine admitting such declarations to include those of absentees.”


Brief report of an upcoming trial of an Italian priest who, having agreed to look after a woman when her husband immigrated to the United States, eventually told both spouses that the other was dead, causing the husband to remarry and the wife to be reduced to poverty. The couple discovered the priest’s deception when the husband, while on a European vacation with his new family, was approached by a beggar who turned out to be his first wife.


Article examining the Bush Administration’s War on Terror. The author argues that persons disappeared by the United States government are entitled to compensation under both international and domestic law.


Note discussing enforced disappearances in Sri Lanka. The author believes the government should be doing more to prevent and punish such activities and offers various suggestions for how it can do so.


Article recounting the drafting history of the MPT. The author mentions that the “conference [that produced the treaty] was an unusual one for the United Nations for it is the first conference called directly by the General Assembly. Normally the various international conferences held under the auspices of the United Nations have been called by the Economic and Social Council.”


Article outlining Ontario’s LAR. Finding that “[i]t is clear from the status of the law in Ontario that a maze of jurisdictional and substantive rules exists in which the interests of justice can be perverted by the complexity of the common law,” the author argues that the province should adopt the Uniform Presumption of Death Act (a 1974 model statute promulgated by the Uniform Law Conference of Canada).


Article documenting the increasing use of enforced disappearances by world governments. To help combat such practices, the author calls on “the United States to take disappearances into account in deciding whether to grant [financial] assistance to a country.”


Article discussing the North Korean government’s use of enforced disappearance against South Korean citizens. The author concludes that “activists have made tremendous progress in bringing the enforced disappearance of South Korean nationals into the international spotlight.”

(N.B.: The petition triggering the United Nations’ investigation is reproduced in Citizens’ Alliance for North Korean Human Rights and Handong International Law School, *General Allegations to the*


Article finding that “in contemporary English litigation the presumption of death has little, if any, practical effect” and adding that it is “difficult to see that the concept serves any purpose at all.” The author attributes the presumption’s lack of use to “the demise of the jury in contemporary English civil proceedings” and “the willingness of the modern judiciary to draw the inference that a person is alive or dead when he simply disappears.”


Article focusing on Article 24(2) of the EDC, which gives the public the right to know the truth about enforced disappearances. The author argues the provision’s wording raises questions about its “social dimension, its relation to freedom of information and [the] scope of the term ‘victim.’”

(N.B.: This article is part of the author’s larger study of the EDC. See Ricardo A. Sunga III, *Protecting the Children of the Lost*, 86 Phil. L.J. 796 (2012), and Richardo A. Sunga III, *The Committee on Enforced Disappearances and its Monitoring Procedures*, 17 Deakin L. Rev. 151 (2012).)


Article discussing Israel’s adoption of the MPT. The author points out that compared to Israel’s own law, the treaty’s procedures for having a missing person declared dead are cumbersome. As a result, the author advises local litigants who do not need an internationally-recognizable declaration of death to use Israel’s domestic law.


Article about the proposed MPT. The authors call for various changes “to take into account the peculiarities of local laws,” but even without such revisions view the treaty “as a bold and far-reaching step in the direction of solving the many legal problems created by the disappearance of millions of victims of Nazism.”


Article surveying England’s LAR. The author describes absentee cases as hard for courts because the evidence is “logically insufficient.”


Article examining the enforced disappearance of Spanish citizens between 1936 and 1975. Although Spain has adopted the EDC, the unwillingness of its courts to enforce its provisions leads the author to put more hope in foreign tribunals.

120) Chin Tet Yung, *Death by Disappearance—As Good as Dead?: Re Wong Sook Mun Christina*, 2005 Sing. J. Legal Stud. 416

Case note on *Re Wong Sook Mun Christina*, [2005] 3 S.L.R. 329. The applicant sought to have her father, who had not been heard from in 12 years, declared dead. In denying her request, the
Singapore High Court ruled the applicant had not done enough to prove her father was no longer alive. Agreeing with the decision, the author argues “the time has come to put to rest the so-called presumption of death. If one adopts a strict approach to the proof of basic facts in the current presumption, one could draw an inference of death without the need for a presumption.”

**Criminal Law (see also Footnote 17 and Item 39)**


See description under Item 76.


See description under Item 39.

**Family Law (see also Item 175)**

123) Samuel Abrahams, *Two Score and Three of Enoch Arden in New York, 5 J. FAM. L. 159 (1965)*

See description under Item 41.


Article surveying Enoch Arden judicial decisions. Based on a review of newspaper stories, the author concludes that such incidents occur much more frequently than is commonly believed, particularly during wartime.

125) Sterling Case, Note, *Belief in Death of Absent Consort as a Defense to a Charge of Bigamy, 10 WYO. L.J. 158 (1956)*

See description under Item 73.


Article discussing how different jurisdictions deal with missing spouses who reappear. The author finds that “[o]nly a few states expressly provide what the returning absentee may do to affect the second marriage. Problems of legitimacy and property rights are still left undetermined. ... Comprehensive legislative enactments are necessary in order to obtain a more complete solution of the problems presented in an Enoch Arden situation.”


Article on how different states handle spouses who return after long absences. Convinced that “Enoch Arden statutes in many states are not well thought out, and often do not really deal with the problem at all,” the authors offer a “Proposed Model Enoch Arden Statute ... to rectify the many inequities and inconsistencies that presently exist.”


See description under Item 43.


Article examining the plight of Jewish women who cannot get divorced because their husbands have become absentees. The author believes that to retain its credibility, Jewish divorce law must be amended “to redress this problem completely, not just artfully manipulated to cure bits and pieces of it.”

130) G.F. Peter Mason, *A Matter of Life and Death, L.J., June 8, 1956, at 359*

See description under Item 100.

131) Marie Munk, *Do We Need Better Enoch Arden Laws?, 19 B. BULL. 270 (1948)*
See description under Item 31.

Article examining Jewish divorce law following 9/11. According to the author, “a dispensation has been given or will be given in each Trade Center death case ... [so that the] tragedy will not give rise to an agunah crisis.”

See description under Item 102.

134) Note, *Re-Marrying Under the Mistaken Belief in Death of Previous Wife*, 13 VA. L.J. 808 (1889)
See description under Item 106.

E. Insurance Law

135) James W. Archer, *Hang Your Clothes on a Hickory Limb, But Don’t Go Near the Water—or—How to Disappear Without Drowning*, 33 INS. COUNSEL J. 239 (1966)
Article detailing the increasing number of faked drownings being staged by insureds hoping to collect on their life insurance policies. The author cautions insurance companies and their lawyers to view “every mysterious disappearance ... with extreme suspicion.”

See description under Item 62.

Comment discussing the problems life insurers face when an insured disappears. The author argues that adoption of the UAA would “alleviate the burden cast by the presumption [of death] upon insurer, beneficiary, and court.”

Comment identifying the three principal challenges that confront life insurance beneficiaries when an insured goes missing: proving that the absentee is dead; that he or she died before the policy lapsed; and that the suit against the insurer is not time-barred. The author suggests that the statute of limitations should begin to run from the earlier of the end of the statutory period or when circumstantial evidence provides reasonable grounds for believing the absentee is dead.

Note examining the presumption of death due to unexplained absence in life insurance cases. The author concludes that while “the presumption of death after unexplained absence has been severely criticised, it would seem to serve a useful purpose when there is no evidence upon which the fact or time of death can be established.”

Article surveying how life insurance cases involving absentees have fared in the courts. The author recommends that insurers include in their policies a provision that “no presumption of death should arise from disappearance until the policy should have continued in force by the payment of premiums throughout the expectation of life of the person upon whose death the contract matured according to the company’s table of mortality, reckoned from the date of the policy.”

See description under Item 57.

See description under Item 33.

Article discussing how courts in life insurance cases should balance the presumption of death by prolonged absence or exposure to a specific peril with the presumption against suicide. The author believes “that the presumption against suicide has no place in disappearance litigation [because] the insured’s body is missing, which makes uncertain not only the fact of death but also its immediate cause.”


Article examining the problem of pinpointing the date of death in life insurance disappearance cases. The author proposes that courts engage in “a supplementary presumption that death occurred at or near the time of the disappearance.” Doing so, the author says, “would more nearly conform to the probabilities, would simplify problems of proof and the analysis of trial courts, and would contribute toward the enhancement of family security[.]”


See description under Item 19.


See description under Item 103.


See description under Item 26.


See description under Item 72.


See description under Item 18.


See description under Item 25.


See description under Item 23.

152) Note, *Presumptions—Death After Seven Years—Presumption as Evidence of Time of Death*, 45 Harv. L. Rev. 192 (1931)

See description under Item 67.


See description under Item 63.


Article listing the problems that absentees and returnees pose for life insurance companies. The author laments the fact that the case law on the subject is not consistent and “too many [of the decisions] either blindly follow outmoded presumptions or, being hard cases, yield bad law.” To remedy the problem, the author calls on states to rediscover the UAA, which “after a short life in which it was adopted by Tennessee, Maryland and Wisconsin, has disappeared as completely as the missing persons with whom it deals.”

Article describing how life insurance companies deal with claims involving absentees. According to the author, “The burden placed upon an insurer defending an action for life insurance benefits, in a case based on the disappearance of the insured, will vary depending on whether the claimant has the benefit of a presumption of death. … The presumption of death that arises from a seven-year absence (or a shorter period of time that may be prescribed by a particular state statute) does not usually carry a lot of evidentiary weight. However, at a minimum, when the presumption applies, the insurer must go forward with evidence to prove the insured is alive.”

W. Calvin Wells, Jr., *When the Insured Disappears*, 35 Miss. L.J. 28 (1963)

Article comparing Professor Thayer’s view to the “Pennsylvania Rule,” particularly as applied in life insurance cases. Under the former, the presumption of death due to prolonged absence is a mere presumption, while under the latter it is treated as evidence. The author argues that Professor Thayer’s position, which is the majority rule in the United States, is preferable to the Pennsylvania Rule because it allows the jury to “decide the case on the evidence, without being confused by the presumption and what probative effective it should have.”

**F. Legal Ethics (see also Item 105)**


Column suggesting what Nebraska lawyers should do with trust account funds that cannot be returned because the client has disappeared. The author recommends “distribut[ing] [the] funds according to state law after waiting the statutorily prescribed amount of time.”


Column concerning the ethical duties of Illinois attorneys who lose track of their clients. The author notes that “[p]revention is the best cure for missing client problems. When that approach fails, you’ll need to … make a diligent search for the missing client—and seek expert advice about how to proceed.”


Column about the challenges faced by Illinois lawyers who discover that their client has disappeared. The author notes that such lawyers “face serious ethical issues, unbillable hours, and untold stress” and recommends taking “prompt action to resolve the problem, [including] seek[ing] help from your professional liability insurance carrier.”


Column providing advice to Georgia lawyers whose clients disappear. The author points out that if the client cannot be found, the lawyer cannot accept the other side’s settlement offer: “Although it hurts to leave a good offer on the table, ultimately you may have to withdraw from representation if you cannot find the client.”

161) Arthur Garwin, *Lost in America—What to Do When the Settlement’s Here (But Not the Client)*, 79 A. B.A. J. 103 (Nov. 1993)

Column on the ethical problems created when clients disappear. The author advises lawyers to “establish office procedures directed toward maintaining contact with clients … [and] … clearly establishing the lawyer’s authority to act [in the client’s absence] at the beginning of the relationship.”


Article discussing what an Oregon lawyer should do when a client disappears. The author emphasizes the need to conduct a thorough search for the client, including mailing, e-mailing, and telephoning the client; utilizing Google and social networking sites; researching public records; visiting the client’s home and place of employment; contacting the client’s family, employer, co-workers, and medical providers; and hiring a private investigator.
Article analyzing the ethical duties of Florida lawyers whose clients disappear. The author finds that considerable guidance has been given to practitioners through statutes, court cases, and ethics opinions.

Column telling Hawaii lawyers what they can and cannot do when a client disappears. The author observes that “[i]n cases of escheatment, the attorney should keep a record such that a client would have sufficient evidence to try to reclaim the funds in the event of a reappearance.”

Comment focusing on what lawyers should do when a client vanishes. According to the author, “The problems associated with missing clients are plentiful, yet there has been little done to formally address the problem. Due to the lack of standardization, it is very important to check local rules and statutes to avoid any malpractice liability. Additionally, it will be necessary to determine what that jurisdiction considers an adequate attempt to locate the client in the event of his or her disappearance. As with most things in lawyering, however, the best solution to the problem is prevention, and there are many preliminary steps that can be taken to reduce the chances of a vanishing client.”

**Maritime Law**

See description under Item 88.

**Mass Disaster Law**

See description under Item 84.

Article describing the numerous administrative problems that can arise when a mass disaster results in large numbers of missing persons. The author suggests using “presumptive death and specific peril statutes [to] help ease the difficulties survivors face.”

See description under Item 42.

See description under Item 132.

**Military Law (see also Item 79)**

See description under Item 64.

172) John L. Gray, *Trust Problems in Connection with the War*, 16 CONN. B.J. 347 (1942)
Article examining the LAR during wartime. The author believes “the 7-year presumption of death period is too long a time to wait” and describes various ways an attorney can help clients avoid or shorten it.

See description under Item 66.


Report summarizing recent legislation affecting service members and their families. In discussing the UAA, the authors point out that while it "permits the court to appoint a receiver for an absentee . . . the question arises whether notice by publication to the absentee in military service is adequate in view of section 200 (3) of the Soldiers’ and Sailors’ Civil Relief Act and whether the court should appoint an attorney to represent the absent service man."

175) Alfred R. Julien, *Proof of Death Cases Involving Military Personnel Killed or Missing as the Result of War Action*, 6 JURIST 1 (1946)

Article detailing the Catholic Church’s views regarding when a missing service member should be considered dead, so as to allow his or her spouse to remarry. The author recommends that local pastors refer such cases to their superiors, who should in turn work with the appropriate military authorities to determine the absentee’s status.


See description under Item 15.


Article analyzing the Missing Service Personnel Act of 1995. While generally praising the statute, the author argues that further changes are needed in how the government accounts for missing soldiers and civilians.


Article about the legal problems that arise when a service member is captured or goes missing. With respect to the latter, the author provides a detailed explanation of how the military determines that a soldier likely has died and the effect such determinations have on state probate proceedings.


Comment asking whether military absentees and their families are well-served by state laws drafted to deal with civilian absentees. Finding that they are not, the author proposes a "Uniform Missing in Act/Prisoner of War Family Relief Act."

**J. Native American Law**


Comment describing the “Whereabouts Unknown” list maintained by the Office of the Special Trustee for American Indians. As the author explains, the federal government currently is holding in trust millions of dollars belonging to 82,000 Native Americans whose whereabouts are unknown.

**K. Public Benefits Law**


Case note on *Aubrey v. Richardson*, 462 F.2d 782 (3d Cir. 1972). After her former husband had not been heard from in seven years, the plaintiff sought to collect Social Security benefits on behalf of the couple’s two children. Under 20 C.F.R. § 404.705, benefits are available when a wage earner has been “unexplainedly absent” for seven years. The government denied the plaintiff’s request because it believed the former husband’s absence could be explained by his longstanding efforts to avoid paying the plaintiff child support (which had repeatedly landed him in jail). In siding with the plaintiff, the Third
Circuit held the government must do more than offer a plausible reason why an absentee might be in hiding; it has to offer proof he or she is still alive. Recognizing that the word “unexplainedly” creates “a bothersome barrier to the application of the presumption,” the author calls on Congress to eliminate it.


Case note on Nigro v. Hobby, 120 F. Supp. 16 (D. Neb. 1954). After going missing in 1943, an absentee was declared dead in 1950 by a state probate court. Thereafter, the administratrix of the absentee’s estate sought the Social Security benefits the absentee should have received between 1943 and 1950. The government took the position that the absentee died in 1943 and, as such, no benefits were due. When the administratrix’s claim was administratively denied, she appealed to the district court, which found for the government because there was sufficient circumstantial evidence to overcome the presumption that the absentee died at the end of the statutory period. The author, although agreeing with the ultimate result, criticizes the decision for “giv[ing] recognition to [the] presumption that life continues throughout the seven-year period[.]”

Real Estate Law (see also Item 105)

183) Robert Lyle Bath, Note, The Presumption of Death Problem in Title Examination, 6 Wyo. L.J. 189 (1951)

Note discussing the problems that can arise when trying to purchase real property belonging to an absentee. The author concludes that legislative action is needed to ensure the marketability of such properties.

184) W.F. Meier, The Effect of Presumption of Death Upon Marketability of Title to Real Estate, 19 Green Bag 713 (1907)

Article surveying cases in which the buyer sought to rescind the contract on the grounds that the title was clouded by an absentee’s ownership rights. The author concludes that specific performance will be ordered where the absentee has been missing “for a long period of years … [and there is] corroborative evidence pointing to a strong probability of actual death.”

185) Note, Constitutional Law—Due Process of Law—Administration of Estate of Living Person, 19 Harv. L. Rev. 535 (1906)

See description under Item 69.


See description under Item 32.

187) Note, Death—Presumption—Title—Specific Performance, 13 Yale L.J. 320 (1904)

See description under Item 44.

188) Note, Specific Performance—Defenses—Effect of the Presumption of Death Upon Marketability of Title, 27 Harv. L. Rev. 768 (1914)

See description under Item 49.

189) Note, The Effect of Presumption of Death Upon Marketability of Title to Real Estate, 21 Harv. L. Rev. 374 (1908)

Note analyzing the extent to which courts rely on presumptions when asked to order specific performance. According to the author, “The result, then, seems to be that the courts in fact give no weight to either of the presumptions as such, but apply the general rule that the title must be free from reasonable doubt, and to this end they require that the circumstances be such as to show beyond a reasonable doubt that the absentee has died intestate and without legal issue.”

190) Note, Wills—Descent and Distribution—Presumption of Death of Absent Deviser, 32 Yale L.J. 201 (1922)

See description under Item 24.

191) Lewis H. Van Dusen, Jr., Procedure to Perfect Titles Involving Rights, Actual or Potential, of Persons Absent and Unheard Of, 16 Temp. L.Q. 263 (1942)

See description under Item 60.