

Registration of presumed death.

The Evidence Act contains two presumptions relevant to this topic. Section 41 states that any person seen alive is presumed to have continued to live until the contrary is shown subject to reasonable allowance for ageing and other special circumstances.

However, when a person has not been seen or heard of over a continuous period of seven years despite proper inquiry of those people who would be expected to have seen him had he been alive, section 42 allows a presumption to be made that he is dead. Until the seven year period is reached and the presumption of death made, the presumption of continuance of life remains.

Therefore, when a person is lost without trace in, for example, an accident at sea, he may only be presumed dead after seven years and his death certificate should record the date of death as seven years after the last time he was seen alive.

It is important that all sub-registrars follow this practice as matters such as inheritance and title may be involved. There can be no exception made and the period cannot be shortened.

This is the case even when the circumstances of the disappearance would seem to allow a reasonable assumption that he has died at an earlier point in the seven year period such as the date the boat in which a missing man set out was found empty. In cases of doubt, application may be made for a hearing before the Court at which evidence may be called.



Gordon Ward
CHIEF JUSTICE

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