

Question 1769) - Can the judge separate the missing man and his wife, and thereby permit her to remarry?

A: He may not separate them until 120 years* have passed since the day he was born. Upon completion of this period the judge will rule that he is legally dead and the wife will spend the 'Iddah of a widow. She may then remarry if she wishes.

* This is according to Imaam Abu Hanifah RAH. and is the safest. However, the latter Hanafiyah observed the increased temptations and decrease in piety and patience of women, and hence ruled according to the Mazhab of al- Imam Malik RAH. Accordingly the woman will present herself to the judge and provide shar'i evidence that her husband is missing. The judge will conduct further investigations. If nothing is learnt he will rule that the woman must wait a further 4 years. If in that period no further information is obtained and it is not known whether he is dead or alive then the court will declare him dead. She will spend the 'Iddah of a widow and may thereafter remarry.

~ al-Quduri ~