



**International Journal of Biology, Pharmacy  
and Allied Sciences (IJBPAS)**

*'A Bridge Between Laboratory and Reader'*

[www.jibpas.com](http://www.jibpas.com)

## THE LEGAL AND JURISPRUDENCE-RELATED STATUS OF BURIED TREASURE IN IRAN

LEILA TAGHIZADE

Islamic Azad University, Golestan Science and Research Branch

[Ltaghizade122123@gmail.com](mailto:Ltaghizade122123@gmail.com)

### ABSTRACT

The emergence of what is called “buried treasure” today and is the subject of discussion in jurisprudence and legal books dates back to pre-historical eras. The civil law has used the term “historical works” for the first time and has issued some decrees. Also, the articles 173 to 176, and the conditions and effects of buried treasure in civil law are consistent with Imamieh Jurisprudence. The subject is to what extent the law for cultural heritage has affected civil law.

**Keywords: buried treasure- cultural heritage- Imamieh jurisprudence- Law of Iran**

### INTRODUCTION

Civil law has stated items on the decrees relating to “buried treasure” which explains the manner of ownership of property which is exploited from digging (scientific, non-scientific, and random). It seems that the articles relating to “buried treasure” in 1920 are abolished by approval of articles and the mentioned articles have been enforceable only in a short period of time, but it seems necessary to study it briefly in order to

examine the transformation of legal regulations.

The civil law has mentioned “buried treasure” as one of permissible deeds in articles 173 to 176 and has specified some regulations for it. According to article 27 of civil law, the permissible deeds are properties that are not owned by individuals unless someone takes possession of it or use it (such as barren lands which have had no precedent of

being farmed). In this case, the mentioned permissible property will be the individual's property. The laws on permissible items include properties which have been previously owned but the owner has abandoned his/her ownership. Such properties are known as movable and immovable cultural heritage and is categorized in national precious works is named as "waste lands" and the articles 173 to 176 apply to him/her. According to article 173 of civil law, "buried treasure" is a property which is buried in a land or building and is discovered by chance. If the owner of buried treasure is known (e.g. the owner's name is written or carved on it and can be identified) the buried treasure is not considered an unclaimed property and should be transferred to its legal owner. But in case of not knowing the buried treasure owner or if it is extracted from legally unclaimed lands, they should be owned by the one who has achieved it. However, civil law has foreseen articles on the subject of "buried treasure" which is an unclaimed property and the aforementioned law does not apply to historical-cultural properties in its scientific concept or the way of its discovery, ownership, government rights,

etc. with approval of the law on national works in October 1921, the articles related to "buried treasure" in Iran civil law almost lost its executive power and since the legislator has issued special regulations about the method of discovery, maintenance and other affairs of historical-cultural properties (which are named as "antique"), the previous law was implicitly nullified and the regulations related to maintenance of national work which is known as "law of antiques" was enforced since October 1921 (Serami, 2001). [1] Considering the aforementioned statements, we see that most archeologists and legal experts of cultural heritage believe that cultural heritage laws nullify article 173 to 176 of civil law and they are not of executive power. But the majority of lawyers opine that issuing the laws of cultural heritage has made the article of "buried treasure" in civil law far less effective and in fact, the law of cultural heritage has overshadowed the articles of civil law to an extent, but it does not completely nullify it. Also, the articles of civil law are of executive aspect in cases which the buried treasure is not considered as antique. Therefore, what will be studied in the present research is the legal

situation of buried treasure in Imamieh jurisprudence, civil law, cultural heritage law as well as the method of enforcing the law (Imami, 2004). [2]

### **The jurisprudence-related and legal status of buried treasure**

Article 173 of civil law stated the conditions of an object in order to be called as “buried treasure”. According to this article, “buried treasure is a property which is buried in the land or building and is discovered by chance”.

### **The state of being property and the examples of property in civil law and jurisprudence**

Thus, we can state that there is no doubt in seeing buried treasure as a legal property and civil law has discussed it as “object” (Hamu, 2009). [3] In general, the concept of property here is any valuable object including money, jewelry and other movable properties such as copper, clothes, sewed or non-sewed clothes and even mud plates which can be valued by money (Alidoost, 2009). [4] In other words, it can be stated that the buried treasures of gold, silver and jewelry can be categorized in the list above (Mianji, 2008). [5] Does the buried treasure contain only cash money or it

can include immovable cash too? Sheikh in “Nahayaah” and “Mabsoot”, Allameh Helli in “Saraez” and Ibn-e saeed in “Jame’e Kanz” opine that the word “buried treasure” can only be applied to gold and silver.

In “Lom’eh” we read: “buried treasure is a property (of gold, silver and Jewelry) (Safaei, 2010). [6] The reason of this statement above is that if the buried treasure is used solely, it cannot be applied to something other than cash (response: it was considered unacceptable after looking up the dictionary). The extensive reasons exist which buried treasure can include properties other than cash, such as verses and Sunni narrations, such as the narration from “Abi-Ja’far (Meybodi, 2008). [7] So, if it is assumed that the term “buried treasure” is applied to some properties other than cash, but here the concept of buried treasure implies “Rekaz” (the gold and silver on earth) and its meaning can be generalized.

### **To be buried and the example of burial location in civil law and jurisprudence**

The location of property can be anywhere other than the ground. If it is concealed on a tree due to the fear of being robbed, and its owner has died over time, the

hidden property can be considered as buried treasure. So, according to article 173 of civil law, the property should be buried to be seen as a buried treasure. So if one finds a property in desert, alley or street which is not unburied it is not considered a buried treasure, but it is a found property. So the laws of found property apply to it (Imami, civil law). The term “ground” or “building” may imply a tree, or inside a wall or the ceiling. The examples of burial location in Imamieh jurisprudence is explained further.

In “Mesbah ol-Faqih” we read: “the implication of “under the ground” is its seeming and apparent meaning and can be generalized to the holes inside buildings and ceilings. So, the examples of “hidden” in the concept of buried treasure are the requirement of its situation and its application in conventional dialogues (that is, what determined the meaning of “hidden” is the convention). So, it does not precede the mind, such as someone who states: “someone who has discovered a buried treasure”, except that the discovered property is a hidden one in basement, building, etc.” This statement includes the aforementioned cases in terms of

criterion of expurgation. In fact, the meaning of ground is its public and conventional meaning. But “Kashef al-Ghata” does not consider such cases as the examples of “underground” (Mofid, 1988). [8]

### **The intention of property storing in civil law and jurisprudence**

The burial may be optional or compulsory. In other words, a person may hide some property in the ground in order to maintain and store it, or a human’s intention may not affect its burial. Optional storing occurs when someone buries some property intentionally and it is found after several years or maybe centuries by people. The majority of buried treasures are in this category. In past ages, people used to hide their valuable properties due to their fear of robbery, and these properties were destroyed over time. This is an optional process. But compulsory storing does not happen with one’s intention and a precious property might bury in the ground because of flood or earthquake and remain there for many years. Lawyers have consensus on this subject, believing that the term “buried treasure” in civil law includes the same meaning in jurisprudence, and opine that civil law

has not insisted on the concept of storage. So, the status of buried treasure burial (optional or compulsory) does not matter (Ja'fari Langeroudi, 2000). [9] As far as I know, Mr. Adl describes one of the conditions of buried treasure in civil law book as follows: "according to article 173, the buried treasure should be buried in some location, that is, it should be concealed by a human being. So, the property which is found under the ground but not buried there, like a stone fallen from the sky, cannot be seen as a buried treasure. It also includes the property which is concealed automatically under the ground.

In "Kashf al- Ghata" we read: "buried treasure is a property which is buried in the ground or a building and the term "property" implies money which is stored by human's action or by itself. "Maslak al-Afham" states: "concealing property under the ground is because of the light of the spot and it is not credible and accepted to bury some property under the ground due to the light. Also, the burial itself is not enough and the person who buries it under the ground should have the intention of storing it." Shahid Sani has mentioned that the intention should be burying and storing

the property under the ground. So, if a property becomes concealed under the ground by itself, the law of unclaimed property applies to them, not the one of buried treasure. It is stated in Masalek that if a property becomes lost because of being hidden under the ground, it is not seen as buried treasure and it is considered an unclaimed property (Al-Sanhouri, 1967). [10]

On explaining the conditions in civil law and Imamieh jurisprudence, we observed that in contrast with the lawyers, the jurists have a consensus on the conditions of buried treasure; the main cause of discrepancy between jurists' ideas is that they study the subject of buried treasure from the view of applying or not applying "one-fifth" (Khoms) to consider it as buried treasure. In fact, the jurists intend to define buried treasure through studying the conditions of property in order to apply the term "one-fifth" to it, because one of the seven items to which one-fifth of property applies is buried treasure, and if we know these items as pre-requisites (e.g. the intention of storage, or the necessity of being money), the treasure is more proper than buried treasure. So the writer brings up the subject of buried

treasure intentionally to be more comprehensive than treasure. The jurisprudents has called buried treasure as “Rekaz” (same reference) “Kaz” means the hidden place, and treasure is defined as “the whole property under the ground”. But this definition is not applied in the religion and seems to be adopted from an encyclopedia, so it is not considered as a proof (either Arabic or Persian) (Ja’fari Langeroodi, 2000). [ibid]

### **Studying the jurisprudence and legal works on buried treasure**

Buried treasure in unclaimed lands in the view of civil law and jurisprudents

A treasure which is discovered in unclaimed property belongs to the one who extracts it out, because the only one who can claim its ownership is the one who discovers it. In other words, a buried treasure is considered an unclaimed property if only do not belong to a particular owner. If the owner’s name is known, it is undoubtedly cannot be categorized in the list of unclaimed properties and should be submitted to its owner (Safaei, 2010). [ibid] Article 174 of civil law states:” the buried treasure which its owner is not known is

considered the property of the one who has found it”.

A question: the hill which is inside a village and has no owner. Someone has dug it and discovered some particles of pottery, and antique plates. What are the religious conditions for selling and taking possession of them?

Answer: if no owner is found for the property, it can be submitted to the finder, but he/she has to pay its one-fifth to Islamic government. Currently, Iran’s waste lands (and uncultivated lands) are national exclusive properties, belongs to the government. Moreover, according to article 39 of civil law, possession of buried treasure by other people is not legible, regardless of its historical statues. So, according to ownership of unclaimed lands (article 14 of civil law) the buried treasure is not considered and accepted as unclaimed properties currently (Katoozian, 1985). [11] If government allows an individual to revive and reuse a waste land and he/she takes possession of it, he/she will become the owner of buried treasure (article 39 of civil law), unless the authorization is only for the land, not for the property under it. However, this authorization does not cover the buried treasure if it is

in the category of historical works. In short, the regulation related to government's ownership of waste lands nullifies article 176 of civil law.

### **The treasure in authorized excavation and the manner of its ownership**

Scientific and commercial excavation used to be possible by obtaining the required license from Ministry of Culture and Art in any location which may have the remains of historical civilization in it. But commercial excavation is forbidden in historical locations recorded in Iran's national works list and only scientific excavation is allowed in such places. The issuance of license for scientific excavation was carried out with the suggestions of minister of Culture and Art. Considering the lack of scientific institutes in Iran and knowing that the permission for scientific excavation is only granted to scientific institutes, the archeological excavations from 1930 to 1978 was mostly carried out by foreign archeological committees.

### **Permission of excavation**

The request for national excavation was offered from scientific institutes and the request for commercial excavation was offered from applicant firms or persons to the Ministry of Culture and Art. In the

request letter, the applicant information such as position, residence, and nationality of official agent of applicant institute in Iran, the experts which were commissioned to perform the excavation operation, the geographical specification of the area and the purpose of excavation (scientific or commercial) had to be mentioned. The permission for scientific and commercial in areas which had not been recorded in the list of Iran's national works was issued by the minister and the permission for scientific excavation in Iran's national works was issued by the cabinet. The permission was issued for one or more locations and for one or more years. The law did not mention any legal limitation, but the location geographic specification and the duration of excavation operation had to be mentioned in the issued permission. The minister who issued the permission could mention the desire technical conditions in the permission and the excavator was bound to observe them legally. The holder of excavation permission had to perform the excavation operation in each of the locations for which he/she had received the permission for at least 60 days per year. Of course, if the excavation (scientific or commercial)

finished under the agreed time, observation of aforementioned conditions was not mandatory. The approved law in 1921 in its executive regulation mentioned that protection of excavation location is one of the duties of permission holder, and had forbidden any kind of operation which might damage or induce loss to antiques (cultural-historical properties).

### **The enforced law on legal and authorized excavation**

With approving the legal bill in April 1979 for preventing unauthorized excavation for discovering antiques and historical objects, the Council of Iran Islamic Revolution dismissed the mentioned regulations and put an end to the plunder of movable cultural heritage of the country which was performed under the title of scientific excavation by foreign committees, and especially commercial excavation. With approval of this law, the articles of request procedure, issuance of commercial excavation, the manner of distributing the unclaimed discovered properties and scientific aspect of archeological excavation was focused on. As it has been mentioned in the introduction of aforementioned bill, the council of Islamic Revolution's aim

of this law is "to indicate the necessity of protecting Islamic, cultural and historical heritage and prevent from plundering them and transferring them abroad". The scientific viewpoint of Islamic Republic legislator enriched the cultural laws relating to cultural heritage. It is far more effective than the law on protection of national works approved in 1921 which was influenced by an unscientific and commercial approach and considered this kind of excavation as a legal right for government.

### **Buried treasure in unauthorized excavation and the respective responsibility**

In the years prior to Islamic revolution, the chaos derived by issuance of hundreds of excavation permission annually, the lack of government's full supervision on commercial excavation, the authorization of sales permission, and exporting the discovered properties (with observing the legal conditions) contributed to increase the unauthorized excavations throughout the country. From a scientific view, the damages imposed on cultural heritage of our country apply to both categories of excavation. Both types result in perturbation of archeological heels and

destroy their natural order without recognizing their archeological layers. The documents which did not have scientific, cultural, and historical value were or were not commercially credible were destroyed. Archeological layers cannot be restored to its primary status, and our availability to some part of past secrets of our history has been inhibited due to the lack of valuable documents. But the law of 1921 had foreseen punishments for the ones who violate government's rights and excavate the archeological lands and hills without legal permission. According to article 36 of antique executive laws, anyone who excavated without legal permission or intended to remove the antiques out of the country illegally, was fined with 200 to 20000 Rials and had to submit the discovered to the government. This punishment was effective till 1968 and the archeological heels became the target of excavation by the cultural traders due to the inconsistency of this law with the crime of unauthorized excavation.

In 1968, under the pressure of public opinion and the advocates of Iranian culture, the part of penal code related to protection of national works approved in 1921 was revised and article 127 of Penal

Code of Iran was specified to this issue. Article 5 of act 127 with confirming the governing laws on scientific and commercial excavation which had been mentioned in law for protection of national work approved in 1921, states: "anyone who excavates historical location, lands or heels without observing the mentioned order in the law for protection of antique works is sentenced from 6 month to 3 years, even if these lands belong to the excavator. Article 5 of previous Penal Code has not inherently changed government's viewpoint on cultural heritage, but the intensification of unauthorized excavation punishment has led to a positive transformation for crime against cultural heritage and is effective in reducing the crime rate. Certainly, the intensification of punishment can be of preventive benefit if the crime discovery system is able to uncover the crime accurately and fast, and the judicial system punishes the criminal. The two complementary factors could not fulfill the expected duty well because of the presence and credit of commercial excavation. But after 1973, commercial excavation was practically abandoned (the regulations stood effective, but the

executive system did not issue excavation permission anymore) and the campaign for unauthorized excavation was pursued more seriously, but the freedom of cultural property issuance could not contribute to prevention of unauthorized excavation because numerous excavated properties was legally owned by real persons.

The victory of Islamic revolution has made the new government system consider the unbalanced and chaotic situation of movable cultural heritage seriously, leading to enforce the law of prohibition of any kind of excavation for discovering antique and historical objects. This bill is of high legal importance and shows the new government authorities' viewpoint on cultural heritage on which the next evolution in this arena is based. In the introduction of approved article by Council of Islamic Revolution in April 1979, the reasons for prohibition of excavation have been expressed. "Considering the necessity of protecting Islamic and cultural heritage and the need for preserving and maintaining from the view of sociology, science, culture and history, and the theory of necessity of preventing from plundering and

exporting these precious resources which is prohibited by domestic and international laws, this article is approved. Introduction of the aforementioned law has stated the reasons of prohibition of excavation:

- The necessity of preserving cultural, Islamic and historical heritage.
- The necessity of scientific and cultural- historical and sociological researches on national, cultural and Islamic heritages.
- The necessity of prevention of plundering and exporting cultural-historical properties.
- Considering the international regulations for preserving and exploring cultural heritage.

The aforementioned reasons which have been clearly remarked in the introduction of article, demonstrates a revolution in government's viewpoint on cultural heritage. Government of revolution considers exploring and preserving cultural heritage as a duty on which the life of present and future era will be based, while the legal system of pre-revolution government used to see cultural heritage as a purchasable commodity.

---

---

**Excavator's duty in unauthorized excavation**

According to clause 1 of recently mentioned article, any type of excavation in search for antique and historical objects is totally prohibited and the infringer will be sentenced to prison from 6 month to 3 years and government will confiscate all discovered objects for the benefit of public property. If the excavation is operated in the historical locations which have been recorded as national works, the infringer will be sentenced to the maximum determined punishment. Also, in article 562 of Islamic Penal Code (the subject of discretionary punishments) we read: "any type of excavation and exploring for achieving historical and cultural properties is prohibited and the infringer will be sentenced to prison from 6 month to 3 years, and government will confiscate the discovered properties for the benefit of Cultural Heritage Organization of Iran. Also, the excavation tools and devices will be kept by government." If the excavation takes place in historical locations which are recorded in the list of national works or in the religious location, the infringer will bear the maximum determined

punishment. The legislator of Islamic Republic of Iran has carefully considered that the majority of historical heels and archeological areas of country have not been thoroughly studied and identified (Bahrami Ahmadi, 2009). [12]

**Excavator's civil responsibility in unauthorized excavation**

According to article 1 of law of civil responsibility, anyone who induce damages to one's life, property, freedom or commercial reputation intentionally or due to carelessness is responsible for his/her deed. As mentioned earlier, article 562 of civil law attributes any type of excavation in lands and heels throughout the country to Administration of Cultural Heritage and no one is allowed to violate this right. So, the meaning of article 1 of law of civil responsibility by "other one's right which is provided with law enforcement..." is now clarified. According to article 1 of law of civil responsibility, since the excavator has operated his job without legal permission, if the discovered object is wasted in his/her hands, he/she is responsible for it. In fact, it can be stated that an excavator which takes the possession of an object without permission is considered as a usurper.

Article 308 of civil law states that “usurp” is dominance over others’ rights. Also, according to article 315 of civil law, “the usurper is responsible for any deficit imposed on usurped property, even if not attributed to his/her deed.”

## CONCLUSION

By studying the subject of buried treasure in civil law, Imamieh jurisprudence and law of cultural heritage, we state the following results:

1. Lawyers and jurists have a very similar definition of buried treasure, defining it as “a property buried under the ground or in a building and is discovered by human beings. There are some discrepancies in determining its examples which is only related to the domain of buried treasure.
2. We explained that the conditions for a property to be named as buried treasure are:
  - Being asset
  - Being under the ground or in the building
  - Stored by human.

We also mentioned that the lawyers and jurists have not consensus on the aforementioned conditions. For instance, some jurists consider the intention of storage as the required condition for

applying the term “buried treasure”. According to them, if a property is buried under the ground without any particular intention, cannot be named as “buried treasure”. But civil law does not differentiate optional burial of property with compulsory burial.

3. The derived effects of buried treasure in civil law and jurisprudence can be different considering the location of burial. In other words, the type of location of burial determines the effects of buried treasure.
4. The law on a property which is discovered buried: first, it should be examined by the cultural heritage experts. If the object is recognized to be antique and national works, the cultural heritage law should be enforced. If not, the civil law applies to it. We previously mentioned that if the manufacturing date is more than 100 years ago, the object cannot be defined as antique, so civil law should be enforced. Otherwise, the cultural heritage law should be executed. But wide researches and interviews with law experts revealed that the laws of cultural heritage nullify the civil law on buried treasure to some extent. If a buried treasure is discovered and less

than 100 years is passed after its manufacturing date, and it is considered an antique by cultural heritage experts, the law of cultural heritage is enforceable. But if the property is not recognized as an antique, the civil law applies to it.

5. After the property is known as an antique, the cultural heritage law applies different decrees upon it depending the way the property is discovered (authorized, unauthorized, or by chance).

## REFERENCES

- [1] Serami, Seyfollah (2001). Government decrees. Tehran. Abir publication, 1<sup>st</sup> edition.
- [2] Imami, Hassan (2004). Civil law, Tehran, Islamieh bookstore, 21<sup>st</sup> edition.
- [3] Hamu, Muhammad Ja'far (2009), laws of property, Tehran, Ganj-e Danesh, 7<sup>th</sup> edition.
- [4] Alidoost, Abolghasem (2009). Jurisprudence and prudence; Tehran, the organization of Islamic culture and though research center publication, 1<sup>st</sup> edition.
- [5] Mianji, Ali Ahmad (2008). The principles of property in Islam. Tehran, Jangal publication, 1<sup>st</sup> edition.
- [6] Safaei, Seyed Hassan (2010). The preliminary course of civil law. Tehran. Mizan publication, volume 1.
- [7] Meybodi, Faker (2008). The government prudence from Imam Khomeini's view. The collection of works on thoughts and ideas of Islamic government, government decrees and Imam Khomeini's prudence. Tehran, the institute of collection and publication of Imam Khomeini's works, volume 7, 1<sup>st</sup> edition.
- [8] Mofid, Muhammad Ibn-e No'man (1989), Al-Moghana'. Institution of Islamic publications.
- [9] Ja'fari Langeroudi, Muhammad Ja'far, (2007), terminology of law, Tehran, Ganj-e Danesh publication.
- [10] Al-Sanhouri, Abdolrazagh Ahmad (1967). Al-vasit, Cairo, Dar-Al Nehzat Al- Arabieh, volume 8.
- [11] Katouzian, Nasser (1985). Preliminary course of civil law, Tehran, University of Tehran publication, volume 1, 2<sup>nd</sup> edition.
- [12] Bahrami Ahmadi, Hamid (2009), jurisprudence regulations, volume 2 ("no loss" rule accordant with comparative laws), Tehran, University of Imam Sadegh publication, 1<sup>st</sup> edition.