

INQUIRIES OF DEATHS

A. Introduction

1. In Malaysia, an inquiry of death is carried out when there is reason to suspect that a person has died in the following manner:

- sudden;
- unnatural;
- by violence; or
- cause of death unknown and in situations where the law requires an inquiry.

2. The inquiry is conducted by a Magistrate in a place open to the public.

3. The Magistrate will inquire as to:

- when, where, how and after what manner a deceased person came by his death; and
- whether any person is criminally concerned in the cause of such death.

4. Public interest requires that inquiries of death should be held as soon as possible after the death is reported.

B. The Law

5. The applicable law is found in Part VIII, Chapter XXXII, of the Criminal Procedure Code (CPC).

6. Under section 330 of the CPC, a police officer making an investigation shall, if it appears to him any reason to suspect that a person came by his death in:

- a sudden or unnatural manner;
- by violence; or

- that the person's death resulted in any way from or was accelerated by any criminal act or a 'slip' on the part of any other person,

at once inform the nearest Government Medical Officer and, unless it appears to the police officer that the dead body should be viewed by a Magistrate at the place where the dead body was found, the police officer shall take or send the dead body to the nearest Government hospital for the holding of a post-mortem examination of the dead body by a Government Medical Officer: provided that if such officer is satisfied as to the cause of death and that the deceased came by his death by accident he may order the body to be buried forthwith.

7. The report of the Government Medical Officer conducting the post-mortem is necessary because it may determine the medical cause of death, which may be due to:

- a natural disease,
- poisoning,
- accident or
- even a cleverly executed murder without any visible signs.

8. The said report may enable the Magistrate to find out the legal cause of death.

C. When should an inquiry of death be held?

9. An inquiry of death can be held in the following circumstances:

- unnatural death, such as suspected murder;
- suspected suicides;
- sudden death including those that appears to be caused by natural causes but where the exact medical cause of death is not known;

- death following anesthesia, surgery or any medical investigative procedure;
- death of any person who dies while in the care of a person or in the circumstances that raise doubt about the deceased's care;
- death associated with pregnancy, abortion, childbirth, etc.;
- death related to workplaces or occupational diseases; and
- where a dead body is discovered in mysterious condition and it is not known how the person came by his/her death;
- where an inquiry has the possibility of exposing important fault or danger not already known;
- where the view of the family of the deceased or members of the public are such that an inquiry is likely to assist and maintain public confidence in the administration of justice, health services or other public agencies;
- where in any death that when considered with other deaths in similar situation indicates that there may be an unexpected increase of danger in a particular location, area, family, industry or activity;
- where there is uncertainty or conflict of evidence as to justify the use of the medico-legal process to determine the cause of death;
- where natural disasters strike and cause multiple deaths.

10. Where death appears peaceful but the cause of death is not known, such death may also be classified as death requiring inquiry before a Magistrate.

11. Where there is a death in custody such as in a police station, remand prison, prison, rehabilitation center, detention camp, mental institutions, asylums, etc., an inquiry should be held.

12. In other cases the Magistrate may hold an inquiry if he thinks it is expedient to do so.

13. Under section 339 of the CPC the Attorney General who is the Public Prosecutor may direct a Magistrate to hold an inquiry into any death.

D. When should a full inquiry of death not be held?

14. Under section 333 of the CPC a full inquiry of death need not be held where the Magistrate is satisfied as to the cause of death, e.g. fatal road accidents that are accidental in nature and the cause of death is quite clear. It is suffice to hold a paper inquiry. In such cases the Magistrate shall report to the Public Prosecutor the cause of death as discovered to his satisfaction with his reasons for being so satisfied and shall at the same time transmit to the Public Prosecutor all reports and documents in his possession connected with the matter.

15. Under section 333(3) of the CPC the Magistrate need not hold an inquiry where any person has been charged with an offence in respect of any act connected with the death of the deceased or if the Magistrate is informed before an inquiry begins that a criminal proceeding will be brought against any person.

E. What is the objective of the inquiry?

16. Inquiries of deaths are held to:

- identify the dead body i.e. who the deceased was;
- to ascertain the date and time of death;
- the place where the death had occurred;
- how the death was caused;
- after what manner the deceased came by his/her death;
- the person/s who caused or carried out the act or blunder that resulted in the death, if any; and
- inquire whether any person is criminally concerned in the cause of such death.

17. Section 328 of the CPC provides that the 'cause of death' includes not only the obvious cause of death as ascertainable by post-mortem examination of the body of the deceased but also all matters necessary to enable an opinion to be formed as to the manner in which the deceased came by his death and as to whether his death resulted in any way from or accelerated by any unlawful act on the part of any other person.

18. Such facts as to the cause of death may constitute particulars that are required to be entered in the death certificate concerning the death of the person.

F. The inquiry process

19. A Magistrate shall commence an inquiry of death as soon as possible after the death is reported to the Magistrate. The inquiry should as far as possible be conducted continuously until conclusion with minimal of postponements in between.

20. The place of inquiry or court where the inquiry of death is held is usually a place open to the public. However, the Magistrate may, on special grounds of public policy or expediency, in his discretion, exclude the public or any person or persons in particular at any stage of the inquiry from the place in which the inquiry is being held.

21. The inquiry of death is not a criminal trial. There is no complainant or an accused to be prosecuted. There is no one to conduct the defence.

22. There are only 'interested parties' such as:

- the next of kin or personal representative of the deceased person;
- a representative of an enforcement authority or government department appointed to attend to attend the inquiry;

- any other person who, in the opinion of the Magistrate, is properly an interested person.

23. There is no judgment passed by the Magistrate and there is no conviction or punishment imposed on any person at the end of the inquiry.

24. In holding the inquiry of death, the Magistrate is usually assisted by the Prosecuting Officer who is there only to assist the court in the examination of witnesses.

25. A counsel representing an interested party may be present in the inquiry proceedings. The counsel's role is not to defend anyone but to look into the interest, i.e. to hold a watching brief, of those who engage him i.e. usually the next of kin of the deceased person.

26. The counsel does not have the right to speak as of right but only when allowed to do so by the Magistrate.

27. The Magistrate shall have the control of proceedings and it is the Magistrate that shall first examine the witnesses. The Magistrate then exercises his discretion to determine who are the 'interested persons' who shall have the right to examine the witnesses.

28. The Magistrate does not have to strictly follow rules but may admit even hearsay evidence if he feels that such evidence may assist him in the inquiry of death. He is not required to follow the usual procedure of the law courts.

29. The rules of procedure and rules of evidence that is applicable in a criminal trial are not applicable in an inquiry of death.

30. The Magistrate should not entertain any form of objection from counsel holding watching brief and other interested persons on the credibility of the witnesses.

31. However, witnesses at inquiries of death do take oath and affirm that they will tell the truth.

32. In giving evidence no witness at an inquiry shall be obliged to answer any question which may cause him to look guilty (i.e. which may incriminate him). Where such questions are asked the Magistrate shall inform the witness that he or she may refuse to answer.

33. The Magistrate holding an inquiry shall record the evidence and his findings and transmit it to the Public Prosecutor.

34. In holding the inquiry the Magistrate shall not frame a verdict that appear to determine any question of:

- criminal liability on the part of a named person; or
- civil liability of any party.

35. Such question on criminal liability should be left in the hands of the Attorney General who is also the Public Prosecutor, and matters of civil liability must be left for a claim in damages in a civil court.

36. The Magistrate's duty is to decide as to the cause of death at the conclusion of the inquiry.

G. Conclusion of the inquiry

37. After hearing the evidence of witnesses regarding the circumstances surrounding the death and considering all the documents produced during the inquiry, the Magistrate may conclude that the death was due to amongst other things:

- an accident caused by the deceased's own fault;
- by events beyond human control; or
- due to the actions of known or unknown person/s.

38. A suicide verdict may be recorded where the Magistrate is satisfied that the deceased intended to and did take his/her own life.

39. The Magistrate may deliver an open verdict, which means that the cause of or the circumstances of the death is unknown or not clear.

40. Under section 341A of the CPC the verdict delivered by the Magistrate at the conclusion of an inquiry is subject to revision by the High Court.

H. Power of the Public Prosecutor

41. Where an inquiry of death has been closed and the Public Prosecutor considers further investigation is necessary he may direct the Magistrate to reopen the inquiry and conduct further investigation and proceed as though the inquiry has not been closed.

[Note: Attached herewith is the Practice Direction No. 1 of 2007 – Guidelines on Inquest issued by the office of the Chief Judge of Malaya, Federal Court Malaysia, Putrajaya dated 5 January 2007.]