

The Jersey Law Review – October 2005 DEVELOPMENT OF THE INQUEST PROCESS

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1 This paper is in three parts. Part One provides an historical perspective, briefly tracing the development of inquest law and practice in Jersey. Part Two gives an overview of the actual procedure and attendant processes. Part Three surveys a range of related issues by means of a question and answer format.

2 In normal circumstances, some 35 inquests are conducted each year in the Bailiwick.¹ The relatively small throughput of cases is merciful but lawyers' experience of the process tends therefore to be limited. It is hoped that Parts Two and Three will better prepare Jersey practitioners for any engagement with the process.

(1) THE HISTORY

3 The evidence from Colonel John Le Couteur, Viscount, given in 1859 to Royal Commissioners examining the Civil Laws of the Island² referred back to an account of the procedure in cases of *levée de corps*³ given by him in 1846 to the Commissioners then examining the Island's Criminal Laws.⁴ In summary, in all cases of uncertain death the Viscount (in practice, usually the Deputy Viscount), upon the Bailiff's order, convened a jury of twelve men to determine the cause of death. Having viewed the body and heard the available evidence, including receipt of a surgeon's report, the jury returned a finding which was registered before the Court (the Bailiff sitting with two Jurats,⁵ constituting the Inferior Number). However, the evidence of witnesses was not heard on oath. Further, the jury was exclusively male and seems to have been drawn from *Principaux*⁶ of the parish where the death occurred.

4 The Attorney General attended each inquest making such enquiries and asking whatever questions he deemed appropriate. In cases where the deceased died a violent death and, for example, murder was suspected it seems to have been the case that the

¹The resident population of Jersey was estimated at 87,500 at the end of 2003. Source: States' Statistical Unit.

² *Report of the Commissioners appointed to inquire into the Civil, Municipal and Ecclesiastical laws of the Island of Jersey* ("1861 Commissioners' Report")

³ Literally: 'raising of a body', but this terminology has to be understood in the sense that the *enquête de levée de corps* originally referred to an enquiry into the cause of death established by attendance upon the cadaver prior to its anticipated release and uplifting.

⁴ *First report of the Commissioners appointed to inquire into the state of the Criminal Law in the Channel Islands*, ("1847 Commissioners' Report")

⁵ Justices (*Jurés Justiciers*).

⁶ That is, the 'principal inhabitants' of a Parish, an ancient term originally designating distinction generally but since at least 1804 – by way of the *Loi (1804) sur les Assemblées Paroissiales* - essentially referring to payers of parochial *foncier* (owners') rate who thus qualified – and still do, now along with registered electors: see article 23, Parish Rate (Administration) (Jersey) Law, 1946, as amended – to be members of the Parish Assembly.

inquest proceeded regardless. However, the jury limited itself to expressing the actual cause of death: any criminal action followed virtually independently.⁷

5 Even allowing for the passing of the Inquests and Post-Mortem Examinations (Jersey) Law, 1951,⁸ the procedure described above had changed surprisingly little by the time the writer took office as Viscount in 1981: the Bailiff continued to decide whether an inquest was necessary; twelve jurors (as a matter of practice, still exclusively male) selected from a small standing panel continued to sit with the Coroner (Viscount or Deputy Viscount) in all cases; and the deceased's body was always viewed.⁹ But by now the evidence was taken on oath (1880 *Règlement sur les Levées de Corps*, article 2) and always recorded. The inquest's finding and report were also submitted to the Bailiff in Chambers for registration in the rolls of the Court (unless the jury was divided, in which event their individual opinions continued to be given direct to the Court).¹⁰ By virtue of the Bailiff's fiat the Viscount was always required to give notice to the Attorney General that an inquest was to be held, but by now the maxim *le criminel tient le civil en état*¹¹ generally prevailed, so that, apart from sitting ('opening') to receive, essentially, evidence of identification and thus, where possible, to release a body¹² for burial or cremation,¹³ the inquest always stood adjourned in order to await and to be informed by the outcome of any (serious) consequential criminal proceedings.¹⁴

6 It seems that the actual return ('verdict') of an inquest has in Jersey been expressed in narrative form from the very distant past. Until recently,¹⁵ the narrative form of verdict was steadfastly maintained in the following (fictitious) form (English version) -

The body is that of AB, aged 72 years and 3 months, native of Sheffield, Yorkshire, and that he was certified dead at the General Hospital, St Helier, on the afternoon of Sunday, 6 June, 2004; death being attributable to blood loss suffered as a result of his aortic artery being severed when, while cycling along the Green Lane, St Mary, in an intoxicated condition a short time earlier, he collided and impacted with a cultivator attached to a stationary tractor.

7 In this way the inquest's verdict answered the four questions put to the Viscount by the Bailiff in his order, namely: Who was the deceased? When did he die? Where did he

⁷ 1847 *Commissioners' Report, minutes of evidence*, paragraph 1560.

⁸ Which essentially gave statutory authority to orders for post-mortem examinations, especially those that might obviate the need for an inquest. The central role played by the post-mortem examination is discussed further in Part Three.

⁹ An option still available to the Viscount under article 10 of the Inquests and Post-Mortems (Jersey) Law, 1995, as to which see below.

¹⁰ 1880 *Règlement*, article 3); see further: *Re Monamy – AG v Boreham et aus.* (1885) 22PC 87.

¹¹ A customary law maxim meaning that criminal proceedings generally have priority over civil proceedings relating to the same circumstances. (Proportionality would be decisive of the question whether an inquest should precede the disposal of 'lesser' criminal charges.)

¹² This very desirable objective might unfortunately have to await the completion of an examination (of the body) by a pathologist for the defence where, consequential to death, a serious criminal charge is laid.

¹³ Where, consequential to death, the laying of a serious criminal charge is indeed anticipated, a cremation of the deceased's body is in fact unlikely to be authorised upon the opening of an inquest.

¹⁴ When it could – and still does – sit largely formally.

¹⁵ During the early part of 2005 anachronistic language was modernised. Interestingly, in England and Wales, while 'short-form' verdicts remain in common use, case-specific narratives are now acknowledged to be an available alternative – see: *R v HM Coroner for West Somerset ex parte Middleton* [2004] UKHL 10.

die? How did he die? The information elicited also served to enable subsequent registration of death under the *Loi (1842) sur l'Etat Civil*, as amended.¹⁶

8 Notwithstanding the sporadic intervention of the legislature, as mentioned, the inquest procedure continued to rest on a largely customary law basis until the passing of the Inquests and Post Mortems (Jersey) Law, 1995. The 1995 Law¹⁷ provided a modern statutory foundation for the ascertainment of the cause of death and is the basis upon which inquests have since been held: it accordingly underpins the modern procedure and processes. However, it is important to note that the 1995 Law does not entirely codify the law. The related customary law¹⁸ thus remains available to supplement the statutory scheme.

9 It needs also to be explained that up to the coming into force of the 1995 Law the Bailiff exercised a related largely customary law jurisdiction in respect of matters relating and ancillary to death. All such matters now fall within the purview of the Viscount. Hence, questions of exhumation and re-burial,¹⁹ and those concerning the transportation of bodies in and out of the Island are subject to his supervision: see generally, once implemented, the Burials and Exhumations (Jersey) Law, 2004.

(2) PROCEDURAL OVERVIEW

10 The 1995 Law contains key provisions encompassing -

- duties of notification of death (Article 2)
- inquiries by the Viscount into death (Article 3)
- post-mortem examinations and scientific analysis (Articles 17-20)
- permissible inquests (Article 4)
- mandatory inquests (Article 5)
- juries (Articles 7 and 8)
- witnesses (Articles 9 and 12)
- proceedings at inquest (Article 11)
- findings (Article 14)

11 In summary, when an unexpected or unnatural death occurs, the police must be informed. The police notify the Viscount who causes enquiries to be made. The Viscount may²⁰ order a post-mortem examination to ascertain cause of death. Where a post-mortem examination is considered by the Viscount to provide insufficient clarification of the relevant circumstances he may proceed to hold an inquest - and must do so where (e.g.) the death occurred while the deceased was in custody.

¹⁶ The 1842 Law was repealed and replaced by the Marriage and Civil Status (Jersey) Law, 2001, but the 'registration' requirements were, rather naturally, broadly replicated in the latter.

¹⁷ Which statute repealed *inter alia* its namesake of 1951.

¹⁸ It would be incorrect, here, blandly to speak of the Jersey common law of inquests: this having hardly been enunciated judicially. An inherent jurisdiction is, in the circumstances, also possibly exercisable. But this latter is not an unlimited reservoir from which new powers can be fashioned at will: *Mayo v Cantrade* 1998 JLR 173 (CA) at 191.

¹⁹ Though not of reburial of ashes, where the relevant Parish Rector is the appropriate authority.

²⁰ Article 17 of the 1995 Law is not mandatory. See further: Part Three.

The sad case of Mr AB

12 In the fictitious scenario illustrated by the verdict shown in Part One let it be supposed that there had been a direct witness to Mr AB's accident, Mr CD, who, at 1500 on Sunday, 6 June, 2004, was driving his car along the Green Lane, St Mary, in the opposite direction to which Mr AB was riding. Mr CD saw the collision and the cyclist being thrown off his bicycle onto the cultivator; on close inspection by Mr CD it was apparent that Mr AB had indeed suffered serious injury. Mr CD used his mobile phone immediately to contact the emergency services (the ambulance, fire and police²¹ services all responded and each was in attendance within 15 minutes). The paramedics had carefully removed an unconscious Mr AB from the cultivator (he was unfortunately covered in blood and lying prone across a row of cutting blades) with the assistance of hydraulic lifting equipment provided by the States' Fire and Rescue Service. He had then been rapidly transported to the General Hospital, St. Helier, life support having been applied en route. Regrettably, however, he was pronounced dead there (in the Accident and Emergency Department) at 1700 on that day after the severed aortic artery had been identified as such and all attempts at repair, transfusion and resuscitation had failed.

13 Police Constable GH had been deputed to lead police investigations into Mr AB's death. The officer immediately began to establish Mr AB's movements on Sunday 6 June and the circumstances surrounding the collision. The Viscount, on notification by the police of Mr AB's death and its apparent circumstances unsurprisingly concluded that an inquest would be required. He had also instructed the States' Pathologist to conduct a post-mortem examination of Mr AB's body. It transpired that: Mr AB had spent three hours drinking in a local public-house before setting out - in good weather and visibility - to cycle the distance of about a mile back to his home, La Petite Balade, St Mary, on Sunday 6 June; his blood/urine alcohol levels (at post-mortem) were found (on toxicological examination by the Official Analyst) to be consistent with the consumption of five pints of beer; the tractor and cultivator belonged to a farmer, Mr IJ; the tractor engine had cut out while the tractor was being driven by him, with the cultivator in tow, along the Green Lane in the direction of Pomme Ferme; Mr IJ had left the tractor and tow stationary, but with hazard lights flashing to the front and to the rear extremities,²² while he had crossed a field on foot in order to telephone for assistance from a neighbouring farm.

14 Mr AB was a widower who had lived alone: his only surviving relative was a nephew, Mr KL, who identified his uncle's body to Police Constable GH at the Hospital Mortuary and engaged the services of the firm of MN, funeral directors.²³ Messrs MN liaised with the Viscount, in support of Mr KL, and the inquest into Mr AB's death was opened on the morning of Friday 11 June, 2004: this was a very short proceeding in which, essentially, evidence of identification was received and Police Constable GH advised the inquest that, while the police report into Mr AB's death had yet to be completed there was no need or

²¹The police presence included that of Centenier EF of St Mary, an honorary police officer of that Parish notified by Police Headquarters.

²² Also with safety triangle displayed to the rear.

²³Of course, funeral directors generally undertake a range of important liaison duties on behalf of the bereaved.

wish to delay the release of Mr AB's body: hence, on behalf of Mr KL, Messrs MN might arrange a cremation. The States' Pathologist confirmed that she had completed her post-mortem examination of Mr AB's body and that she, too, was happy to release his body. Accordingly, the Viscount had thereupon adjourned the inquest and duly authorised the release of Mr AB's body for cremation.²⁴

15 The inquest was resumed on Wednesday 14 July, 2004, once police enquiries into Mr AB's death had been completed. The Viscount had required (summoned either through the Coroner's Liaison Officer in the Viscount's Department or through the police) the following to attend and give evidence on 14 July: the States Pathologist²⁵; Mr CD; Mr IJ; Fire-fighter OP; Paramedic QR; Doctor ST²⁶; Traffic Officer UV²⁷ and Police Constable GH. Mr AB's nephew, Mr KL, was notified of the date and time of the inquest and duly in attendance though he was not formally called to give evidence. Pursuant, respectively, to articles 11(3) and 21 of the 1995 Law, the Attorney General and *Connétable* of St Mary, had each been notified of the date of the resumption of the inquest – also of its opening on 11 June – but, in the event, no appearance was made on behalf of the Attorney, while Centenier EF attended²⁸ at the instance of the *Connétable*.

16 Following the hearing of the evidence,²⁹ the Viscount duly announced a verdict in relation to Mr AB's death as recited in Part One. The verdict was next transmitted to the Bailiff who ordered its registration in the rolls of the Court under article 14(6) of the 1995 Law. Shortly after, having notified the Registrar accordingly (under article 14(7) of the 1995 Law), the Viscount signed the St Helier Registrar's Register of Deaths³⁰ in relation to Mr AB.³¹

(3) QUESTIONS ON RELATED ISSUES

17 Q: Is the decision whether or not to perform a post-mortem examination of a deceased, crucial?

18 A: Generally speaking, yes. For example, by article 64 of the Marriage and Civil Status (Jersey) Law, 2001, where a medical practitioner has not seen a patient during the fourteen days prior to the latter's death, the medical practitioner can then only issue a certificate of death after viewing the body and with the permission of the Viscount. If, after

²⁴Under the authority of article 6(b) of the 1995 Law and the issue of a certificate under regulation 6(c) of the Cremation (Jersey) Regulations, 1961. Note that had the intention been for Mr AB's body to have been buried, the Viscount could have authorised this without actually opening the inquest into Mr AB's death: article 6(a) of the 1995 Law.

²⁵She incorporated the Official Analyst's toxicological report into her own report, thus relieving the latter from attendance at the inquest. See Part Three for a further consideration of the admission of evidence.

²⁶Of the Accident and Emergency Department of the General Hospital who had been part of the hospital medical team into the care of which Mr AB was delivered by the Ambulance Service, and who ultimately certified death.

²⁷Of the States' Driver and Vehicle Standards Department.

²⁸But gave no evidence.

²⁹The witnesses gave their evidence in the order that their names have been given here. The Viscount chose this approach so that the events of Sunday 6 June could unfurl, at inquest, broadly chronologically. Naturally, the Pathologist gave the detailed cause of death as confirmed by post-mortem examination of Mr AB's body (see also footnote 25). The Traffic Officer's and police evidence included reports on the road-worthiness of Mr GH's tractor and cultivator, as well as Mr AB's bicycle.

³⁰It is to be recalled that Mr AB was certified dead at the General Hospital, St Helier, after emergency procedures had failed, not in St Mary where the accident occurred.

³¹The registration replicated the terms of the Viscount's finding.

(e.g.) consultation with such practitioner the Viscount remains uncertain as to the particularity of death he will order a post-mortem examination. Naturally, in many cases a post-mortem obviates the need to proceed to an inquest.³² (But conversely, in relatively exceptional circumstances – such as where a CT (computerised tomography) scan is adjudged to suffice - an inquest might be convened notwithstanding that a conventional autopsy has not been undertaken.)

19 Q: Are inquests held in open court?

20 A: By article 11(4) of the 1995 Law, inquests are to be held in public, subject to the Viscount's right under article 11(5), as seems to him desirable in the interests of justice, to exclude any person³³ or to restrict publication of any evidence.³⁴ It is to be noted that in Jersey inquests are usually held in the HV Benest Room, Ground Floor, Morier House, Halkett Place, St Helier, JE1 1DD. This room, not actually being a court room, provides a more informal environment.³⁵ In exceptional circumstances, however, (such as where the HV Benest Room is too small to accommodate everyone), it may be necessary to use a court room.

21 Q: Who chooses the witnesses?

22 A: The Viscount exercises a discretion as to which witnesses to call but in making his decision he will take into account any requests from interested parties. A list of intended witnesses will normally be provided for the assistance of interested persons.

23 Q: Who are 'interested persons'?

24 A: This is not actually a term of art for the purposes of the 1995 Law. But, for this paper, the phrase includes the family of the deceased and any person whose conduct by act or omission might be called into question in relation to the deceased's death.

25 Q: Who decides in what order the witnesses are to be heard?

26 A: As indicated in Part Two this is also a matter for the exercise by the Viscount of a discretion. As stated at footnote 29 evidence is elicited, broadly, in a chronological (and therefore logical) order.³⁶

27 Q: Can documentary, hearsay or non-proven evidence be received?

³²Up to 50% of deaths reported to the Viscount are resolved at post-mortem and therefore do not proceed to an inquest. Source: *Jersey Court Service Annual Report, 2004*.

³³This would include the usual power to exclude a witness while another gives evidence.

³⁴Such as that relating to a child.

³⁵Neither the Viscount nor any lawyer appearing is robed.

³⁶Where the Viscount accedes to a request from an interested person to call another person as a witness, such a witness does not thereupon become a witness for that person: accordingly, that witness will only be heard when the Viscount decides, and the procedure for the examination and further examination of witnesses summarised below will likewise apply.

28 A: Yes, by article 11(7) of the 1995 Law the Viscount may - doubtless subject to relevance - admit any evidence he thinks fit, whether or not it would be strictly admissible in a court of law: historically in Jersey, the inquest was never constrained by exact adherence to the rules of evidence.

29 Q: Can the family of a deceased, or other interested persons, gain disclosure, prior to an inquest, of technical reports and witness statements made available to the Viscount for the purposes of the inquest?

30 A: Certainly the report (e.g.) of a post-mortem examination should be made available to an appropriate representative of the bereaved as soon as available. Disclosure (e.g.) of witness statements, which in principle should not be released without the consent of the maker, is potentially contentious. The Viscount's practice leans nonetheless towards enforced disclosure where this has not been provided consensually.³⁷ This policy seems justified in that it ensures that the bereaved are not at any stage uninformed or disadvantaged and it demonstrates transparency. In practice such disclosure is allowed subject to the imposition of conditions which prevent further or inappropriate dissemination or use of information disclosed.

31 Q: It seems that in the case of Mr AB the Viscount sat without a jury. In what circumstances does he empanel a jury?

32 A: Under article 7 of the 1995 Law, the Viscount may convene a jury of twelve persons when he considers it to be in the public interest³⁸ to do so. When needed, a jury is empanelled pursuant to article 1 of the *Loi (1912) sur la Procédure devant la Cour Royale*, as amended. In practical terms, for present purposes, this means that jurors are now selected at random (by computer), without gender bias.

33 Q: After the evidence has been heard, do lawyers for interested persons address the Viscount or, where there is one, the jury, on the facts?

34 A: No. By rule 11 of the Inquests and Post-Mortem Examinations (Jersey) Rules, 1995, this is not permitted.

35 Q: When a jury is empanelled does the Viscount still retire with them?

36 A: To date this has always been the case. In the inquest cited above into the death of Miss (Hannah) Sandra Cotter in 1997 the Viscount declined an invitation to change this practice on the ground that it was extremely long-standing and if it was considered

³⁷Of course, the seeking of advance access even by interested persons to the investigating police officer's detailed report on the circumstances surrounding death would normally be a step too far.

³⁸This term is not defined within the 1995 Law. In *the matter of the Representation of Cotter*, 1997 JLR 12 (CA) the Court of Appeal directed the Viscount to give fresh consideration to an earlier decision not to convene a jury: the deceased was a young waitress employed temporarily in the Island who suffered a perforated duodenal ulcer and died; ultimately, a jury was duly empanelled. But note that in England and Wales, now, the Government's proposal is that the use of inquest juries should be limited to death in custody and similar cases. See: Respecting the Dead: Supporting the Living; 07.02.05 White Paper draft.

necessary to change, it was for higher authority to impose the change. In that case the Viscount did however affirm that it is not for him, when retiring with the jury in this way, to play any part in deciding upon the finding of the inquest: his role was merely to give to the jury such further assistance or guidance, e.g. in structuring an appropriate narrative form of verdict, as it might require.³⁹ While the Viscount's reasoning in Miss Cotter's case was presumably appropriate to the circumstances prevailing in 1997, it is suggested that, (given that, once operative, the Human Rights (Jersey) Law, 2000, will formally embed the Convention in Jersey domestic law) the better view now is that the Viscount should no longer retire with a jury and that he has the jurisdiction and authority to direct himself accordingly.⁴⁰ If needs be, the structuring of a narrative verdict can be achieved by the Viscount inviting a jury to respond to a series of factual questions in the manner suggested by the House of Lords in the English case of *R v HM Coroner for the Western District of Somerset ex parte Middleton*.⁴¹

37 Q: Is it the case that the Viscount always sums up the evidence at an inquest?

38 A: When sitting with a jury, once all the evidence has been received, the Viscount should always sum up and give any directions as to the applicable law. When sitting alone it would generally be advisable for the Viscount to sum up the evidence before announcing his verdict but specific circumstances might render this unnecessary.

39 Q: Does an inquest allocate guilt, blame or liability?

40 A: None of these. An inquest is a fact-finding investigation to find out how a person died. It is not a method of apportioning blame. There are no parties at an inquest. There is no indictment, prosecutor or defendant. An inquest is an enquiry which attempts to establish fact. Accordingly, by article 14(3) of the 1995 Law an inquest cannot make any finding of legal liability. An inquest should not be used by any party for the airing or rehearsal of arguments on liability.

41 Q: If an inquest cannot allocate blame or liability what useful purpose does it serve?

42 A: The inquiry, the bounds of which are set by the Viscount, still has as its purpose – pursuant to article 14(1) of the 1995 Law - the answering of the four questions mentioned in Part One: Who was the person who has died and how, when and where did death occur? An inquest should give a wide interpretation to the 'how' question so that it is understood to be: 'by what means and in what circumstances did the death take place?' See, again, *R v HM Coroner for the Western District of Somerset ex parte Middleton*; see

³⁹Reported at 2000 JLR N-53.

⁴⁰Compare: Convention Right 6 – right to a fair trial. But, as said below, an inquest is not a trial and the right does not therefore seem fully to be engaged. See further, *post*.

⁴¹ [2004] UKHL 10

also *R v HM Coroner for West Yorkshire ex parte Sacker*.⁴² The purpose is to enable the cause of death to be fully examined

43 Q: Who cross-examines witnesses at an inquest?

44 A: Strictly, there is no cross-examination of witnesses at an inquest, there being neither trial nor parties. The procedure primarily involves the examination of witnesses by the Viscount. Once he has completed his examination a right of further examination is accorded to interested persons (generally through counsel), however.

45 Q: Can a 'rider' be added to the finding at an inquest?

46 A: Yes, rule 12 of the Inquests and Post-Mortem Examinations (Jersey) Rules, 1995, allows for the 'reporting' of any matter where to do so might help prevent the occurrence of similar fatalities (such as the making of a recommendation to a highway authority that a speed-limit be imposed).

47 Q: Does an inquest have regard to the European Convention on Human Rights?

48 A: As indicated, the Human Rights (Jersey) Law, 2000, is not yet in force. However, *qua* Protocol, the Convention has had application in Jersey since 1953 and the inquest procedure is Human Rights' compliant. The fact that the inquiry interprets the 'how' question to the effect that a full investigation of underlying circumstances takes place is perhaps the fundamental consideration from a Human Rights' perspective in that Convention Right 2 - right to, and protection of, life - is thereby respected.

49 Q: Does a witness at an inquest have the right not to answer questions?

50 A: Witnesses must generally attend an inquest and answer questions (articles 9 and 22 of the 1995 Law). However, by article 12 of the 1995 Law all the privileges and immunities available in a court of law may be claimed at an inquest. So, for example, a right not to answer a question on the ground of possible self-incrimination could be asserted at an inquest; however, where a witness is considered to be vulnerable he may make a prepared statement⁴³ which progresses the business of the enquiry and yet serves to protect the witness.

51 Q: Are pre-inquest meetings with legal representatives granted?

52 A: Yes. The Viscount's practice, normally in the more complex cases, is to make such a facility available so as to address and progress various procedural issues.

⁴² [2004] UKHL 11

⁴³ Or, say, confirm an earlier statement.

53 Q: Where a Jersey resident dies outside the Island in non-natural circumstances would there then be a Jersey inquest?

54 A: This depends on the circumstances. In England and Wales, since the case of Miss Helen Smith in 1982 it has become mandatory to undertake investigations into deaths occurring abroad. But the United Kingdom Government now proposes (for England and Wales at least) to relax that rule given that coroners cannot be granted effective extra-territorial powers and that working with overseas' authorities is often slow and problematic.⁴⁴ In Jersey, the rule has never applied. The Viscount's decision-making is now at all times guided by the provisions of the 1995 Law.⁴⁵

55 Q: Where a person dies in an accident having expressed a prior wish to donate organs on death would the need for an inquest negate that wish?

56 A: Such a situation would always be fact-specific but in principle the Viscount could still – and would hope to - authorise the donation of organs, subject to the safeguards contained in the Anatomy and Human Tissue (Jersey) Law, 1984, as amended.

57 Q: Referring to a comment made in Part One, does the Deputy Viscount still sit as Coroner in most inquest cases?

58 A: Yes. Subject to context, most references in this paper to 'the Viscount' may be taken to refer to the Deputy Viscount. But two Jurats of the Royal Court, the Master of the Royal Court and the Viscount may sit as Relief Coroners when required.

59 Q: When a child is stillborn⁴⁶ will there be an inquest?

60 A: In normal circumstances, no. By definition a stillborn child is not born alive and so would not generally be the subject of an inquest.

61 Q: Does the 1995 Law provide a right of appeal?

62 A: Not expressly, but by article 16 of the 1995 Law the Court may, on the application of the Attorney General showing cause,⁴⁷ order a fresh inquest to be held. In any event, the review of a decision or determination at, or in relation to, an inquest could be obtained by an application for judicial review⁴⁸ or, possibly, by a petition of *doléance*⁴⁹ insofar as there has been any breach of natural justice or manifest error of law. The Human Rights (Jersey) Law, 2000, once implemented, will also secure full Convention rights' protection and remedies.

⁴⁴See *Respecting the Dead: Supporting the Living*; White Paper draft, 7 February 2005.

⁴⁵Articles 4 and 5.

⁴⁶Defined in the Burials and Exhumations (Jersey) Law, 2004, once in force, to relate to a child born after the 24th week of pregnancy. See further article 61, Marriage and Civil Status (Jersey) Law, 2001.

⁴⁷Such as irregularity of proceedings or the discovery of new evidence.

⁴⁸See further *In the matter of the Representation of Cotter*, 1997 JLR 12 (CA).

⁴⁹Literally: 'doleful grievance'.

63 Q: In England, another of the Coroner's duties is or was to make findings in cases of treasure trove. Does the Viscount in Jersey have a similar jurisdiction?

64 A: No. In Jersey any property found and thought to constitute treasure trove (hidden, as opposed to lost, gold or silver coin, plate or bullion) would be claimed as such by the Receiver General on behalf of the Crown but the Viscount plays no part in the adjudication process.⁵⁰

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⁵⁰See Le Gros, *Droit Coûtumier de L'Ile de Jersey* p.380 et seq.

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