

THE NEED FOR PRE TRIAL DISCOVERY
IN CRIMINAL CASES IN
MALAYSIA

by

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CHAPTER ONE

INTRODUCTION

A. Discovery

a. Civil Cases

It is obvious that a case, whether it be a civil or criminal, depends on evidence. Part of this evidence may be oral and part of it documentary. In a civil case, this evidence consisting perhaps of agreements, deeds, correspondence and even tape recordings. The oral evidence must come from witnesses who will testify in court but the documentary evidence will be derived from the documents themselves. It will be of great assistance if before the trial, the parties make known ie. discover to each other, what documents they have, are allowed to inspect the other party's documents intended to be used at the trial and to facilitate the proof of these documents by agreeing on them. Inspection of documents will prevent the other party from being taken by surprise and will shorten the time of the hearing and therefore save costs. The rules of evidence require, in the ordinary way, that a document to become evidence must be proved by calling its maker. Agreement on documents will dispense with this necessity of proof and will also save time and lower the costs of the trial. In a civil case, after the close of

pleadings, in an action begun by writ, each party must make discovery of the documents which are or have been in his possession, custody or power, relating to the matters in question in the action.¹ Discovery can be made whether without order² or by order of court³. Discovery will only be ordered if it is necessary either for disposing fairly of the cause or matter or for saving costs. A party has the right to inspect the documents of the other parties⁴ and to take copies.⁵ Non compliance with the rules will result the action being dismissed or the defence may be struck out and judgment ordered as the case may be⁶ and failure to comply with an order of court will make the party in default liable to committal⁷ as well as the solicitor who has failed to inform him of this order.⁸ The rules do not provide for requirements of Bundle of Documents, but it is very obvious a great convenience not only to the trial court, including the Registrar, but also to counsel if all the documents relevant to the issues at the trial and intended to be used and which have been agreed upon so that the proof of them is dispensed with, are gathered together, bound in one volume and admitted as an exhibit.

b. Criminal Cases

The proceedings of criminal cases are governed by the Criminal Procedure Code and of course, also by the