

DEAD OR ALIVE: The Presumption of Death

On March 8, 2014, Flight MH370 – with its 227 passengers and 12 crew members – took off for Beijing. It never reached its destination.

More than 6 months and a coordinated worldwide search later, its fate remains a mystery.

239 people missing.

While the search will no doubt continue and the families left behind won't stop hoping, the law generally dislikes uncertainties and favors predictability.

Under Philippine law, there are *three periods* relevant to inheritance that we should take note of in cases of disappearance.

The rule of thumb is that a person is presumed dead *for inheritance purposes* after missing for 10 years without trace. However, this period is shortened to 5 years if the person was already 75 years old at the time.

The period is further shortened to 4 years if the disappearance was coupled with a “danger of death”, regardless of the age of the person.

After the lapse of these periods, the estate of the missing person may then be distributed either through a Last Will & Testament left behind by the missing person, or through an Extrajudicial Settlement among the heirs. Remember that rights to inheritance attach only after death, or in this case, *presumptive* death. Consequently, any distribution made earlier is premature and hence *void*.

In the case of the passengers of Flight MH 370, what period should we apply?

If a would-be passenger was on his way to the airport but disappears before boarding the ill-fated flight, then the regular 10 year period applies. If he was 75 years old at the time, then we use the 5 year period.

As for the passengers on board Flight MH 370 when it disappeared, the law identifies a missing aeroplane as a sufficient circumstance presenting a “danger of death” (the law similarly treats a ship lost at sea the same way). The lesser 4 year period will therefore find application.

These presumptions are, of course, *disputable*. Should the missing person later appear, then he is rightfully entitled to recover his estate.

Lastly, it is worth mentioning that the right to the death benefit of a life insurance policy also becomes available to the beneficiaries only when the legal presumption of death shall have been established by the passage of the applicable waiting periods described above.

Of course, in such a case, life insurance companies are not prevented from waiving the waiting period and immediately granting the death benefits to the beneficiaries, as a measure of goodwill, especially when the circumstances clearly indicate the improbability of survival, as in the case of Flight MH370.