

立法會
Legislative Council

LC Paper No. LS124/01-02

**Paper for the Bills Committee on
United Nations (Anti-Terrorism Measures) Bill**

Forfeiture of certain Terrorist Property under Clause 13

At the Bills Committee meeting on 13 June 2002, Members requested the Assistant Legal Adviser to advise, in relation to forfeiture of certain terrorist property under Clause 13 of the Bill :

- (a) whether any other standard of proof applies in civil proceedings apart from the balance of probabilities;
- (b) whether an order for forfeiture can be made under section 24D of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) irrespective of proceedings being brought against any person for an offence with which the seized property concerned is connected.

Standard of proof

2. According to Halsbury, a party bearing the legal burden of proof must adduce evidence sufficient to satisfy a judge or jury to the required standard or degree of proof. In civil cases, the standard of proof is satisfied on a balance of probabilities.

3. Within this rule, variations in the subject matter or in allegations will affect the standard required; the more serious the allegation, for example fraud or professional misconduct, the higher will be the required degree of proof, although it will not reach the criminal standard of proof beyond reasonable doubt.

4. It is not so much that a different standard of proof is required in different circumstances varying according to the gravity of the issue, but that the gravity of the issue becomes part of the circumstances which the court has to take into consideration in deciding whether or not the burden of proof has been discharged. The more serious the allegation, the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.

5. This principle has been applied in disciplinary proceedings in Hong Kong, for example, *Tse Lo Hong v Attorney General* [1995] 3HKC 428, *Dr Lai King Shing v Medical Council of Hong Kong* [1996] 1 HKC 24.

Criminal proceedings not a condition for forfeiture order

6. Under section 24D of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), an order for forfeiture can be made irrespective of proceedings being brought against any person for an offence with which the seized property concerned is connected.

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