

**Legislative Council Bills Committee on  
Domestic Violence (Amendment) Bill 2007**

**Supplementary information**

Clarification of “molest” in the Domestic Violence Ordinance

At the Bills Committee meeting held on 26 November 2007, a Member suggested that the common law definition of the expression “molest” could be set out in the Domestic Violence Ordinance (Cap. 189) while the continued application of the common law rules could be preserved. He quoted the Sales of Goods Ordinance (Cap. 26) as an example. Section 62(2) of Cap. 26 provides that “*The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Ordinance, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause, shall continue to apply to contracts for the sale of goods.*” (emphasis added) Similar provisions can be found in the Bills of Exchange Ordinance (Cap. 19) and the Partnership Ordinance (Cap. 38).

2. While it is possible to provide for the continued application of the common law in a codifying ordinance, we consider that codification will, as a matter of general principle, inevitably limit the flexibility in the evolution of the common law rule concerned. Codifying ordinances should be interpreted by examining the language of the relevant provision in its natural meaning and not strain for an interpretation which either reasserts or alters the pre-existing law. If any previous common law rules are inconsistent with the express provision of a statute, the statute prevails. Furthermore, rules laid down in other common law jurisdictions which are inconsistent with our statute should not be followed. Accordingly, any future development of the law will be limited to the scope of the words in the statute. It is also possible for a common law rule made outside Hong Kong, but codified in a Hong Kong statute, to be reversed by a higher court in the relevant jurisdiction. If that happens, it will necessitate a legislative amendment exercise in order to prevent the law of Hong Kong from progressing on a different path with other common law jurisdictions as far as the rule is concerned.

Department of Justice  
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