

LETTERHEAD OF THE CLERK OF FACULTY

FACULTY OF ADVOCATES

By Fax: 00 852 2509 9055

11 September 1998

Your Ref.: CB2/BC/2/98

Mrs. Percy, M.A.,
Clerk to the Bills Committee,
Legislative Council,
Legislative Council Building,
8 Jackson Road,
Central, HONG KONG

Dear Mrs. Percy,

Evidence (Amendment) Bill 1998

I refer to your letter dated 8 August 1998, relative to the above.

As you rightly state, one of the effects of the passing of the Civil Evidence (Scotland) Act 1988 was the abolition of the rule against hearsay evidence, the introduction of which concept into the Scottish jurisdiction appears to have taken place with comparatively little difficulty, and to have been accepted by practitioners before the Courts simply as a workable revision of the evidential basis on which cases were hitherto presented.

On the basis that, by virtue of the operation of the abolition of the rule, cases which previously had little prospect of success can now properly be presented, there may be a slight relative increase in the level of litigation before the Courts due solely to the operation of the relevant provisions of the Act.

I regret, however, that there is little further comment which I am in a position to make, other than to suggest that, as regards aspects of the Scottish provisions which have been the subject of comment and debate before the Courts, it may be

helpful to refer to the following reported decisions:-

M & I Instrument Engineers Limited v. Varsada 1991 SLT 106

Highland Venison Marketing Ltd, v. Allwild GmbH 1992 SLT 1127

T.S.B. Scotland plc. v. James Mills (Montrose) Ltd (in receivership)
1992 SLT 519

Lenaghan v. Avrshire and Arran Health Board 1994 SLT 765

Devies v. McGuire 1995 SLT 755 and

Cavanagh v. B.P. Chemicals Ltd. 1995 SLT 1287.

I trust that the above will be of assistance.

Yours sincerely,

Iain G. Armstrong