

**Responses to issues raised by the Bills Committee
during the clause-by-clause examination
(Position as at 10 April 2000)**

	Comments of the Bills Committee	Responses	Draft CSA
(1)	Clause 3 (section 2) - Interpretation	Upon further reviewing the definitions, we agree to delete the one on “actions for personal injuries” as it is no longer necessary after the combination of proposed section 32(1) and (2) of the Bill.	Page 1 of the 7 th draft CSAs
(2)	<u>Clause 17-18 (sections 29-30) Rescuing goods/Assaulting officers</u> - to clarify whether a person is only liable to imprisonment but not a fine on conviction of indictment under proposed section 29(b) and 30(b)	Under proposed section 29 and 30, a person is <u>liable</u> on conviction on indictment to the sentence of imprisonment up to two years. As the sentence is not mandatory or fixed by law, the District Court is empowered by section 101F(a) and 113A of the Criminal Procedure Ordinance (Cap.221) to impose a fine in lieu of or in addition to imprisonment up to 2 years when the defendant is dealt with on indictment under the proposed sections.	-

(3)	<p><u>Clause 40 (section 72B(3)-(6) Rules as to proof of facts and admission of statements in civil proceedings</u> - to explain whether new section 72B(3)-(6) would affect legal privilege, having regard to a recent case <i>General Mediterranean Holdings S.A. v. Patel and Another [2000]1 WLR 272</i></p>	<p>The case cited by the Bills Committee is on the validity of Rule 48.7(3) of the UK Civil Procedure Rules 1998 made under paragraph 4 of Schedule 1 to the UK Civil Procedure Act 1997. Paragraph 4 of Schedule 1 to the Civil Procedure Act 1997 provides that the Civil Procedure Rules may modify the rules of evidence as they apply to proceedings in any court within the scope of rules. Rule 48.7(3) empowers the court, in dealing with applications for wasted costs orders, to <u>order</u> the disclosure of privileged documents. The right to legal confidentiality is however a matter of substantive law and could only be altered by way of a clear provision to that effect in a piece of principal legislation, rather than merely by the making of an ordinary rule of evidence. This is a distinction drawn and explained by Toulson J. at p.294 B-D of the case. As rule 48.7(3) was not concerned with a mere matter of procedure or a mere rule of evidence but limited a substantive right, it was held to be ultra vires.</p> <p>Proposed section 72B(1) of the Bill empowers the Rules Committee to make rules of court for the means by which particular facts may be proved, the mode in which evidence of the facts may be given and the conditions subject to which oral evidence may be given. Proposed section 72B(3)(4)(5) and (6) specifically deal with expert evidence. Proposed section 72B(3)(a) provides that the rules may enable the court in civil proceedings to <u>direct</u> a party to disclose expert evidence, if that party proposes to bring the same as part of his case at the trial, to the other parties by</p>	-
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		<p>the date specified in the direction. The effect of the section is that a party who fails to comply with the direction may be prohibited from adducing in any expert report under Part IV of the Evidence Ordinance and any oral expert evidence dealing with matters specified in the direction except with the leave of the court (proposed section 72B(3)(b) and 72(B)(4)).</p> <p>Proposed section 72B(3) does not empower the Rules Committee to make rules abolishing or limiting the right to legal confidentiality. It merely gives the Rules Committee power to make rules regulating the right of a party to adduce expert evidence in civil proceedings. The legal professional privilege will not thus be abolished or affected by the rules to be made under section 72B.</p>	
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