

The Jersey Law Commission

CONSULTATION PAPER

THE BEST EVIDENCE RULE IN CIVIL PROCEEDINGS

JERSEY LAW COMMISSION

CONSULTATION PAPER NO 3 October 1999

The Jersey Law Commission was set up by a Proposition laid before the States of Jersey and approved by the States Assembly on 30th July 1996.

Advocate Keith Baker,
Chairman

Mr David Lyons, English
Solicitor

The
Commissioners
are:

Mr David Moon, Solicitor

Advocate Alan Binnington

Mr. Clive Chaplin, Solicitor

Advocate John Wheeler

The Jersey Law Commission invites comments in writing on this Consultation paper before 31 January, 2000. The address of the Jersey Law Commission is:

PO Box 87
St Helier
Jersey
JE4 8PX

Fax no: 01534 609333

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THE JERSEY LAW COMMISSION

CONSULTATION PAPER

THE BEST EVIDENCE RULE IN CIVIL PROCEEDINGS

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THE BEST EVIDENCE RULE IN CIVIL PROCEEDINGS

The Law Commission is enquiring into the usefulness of the hearsay rule in civil proceedings and whether the rule against hearsay evidence should be retained in whole or in part.

1. Definition of the Rule (Contents List)

1.1 It is a general rule that the best evidence of which the nature of the case will admit must be produced if it can possibly be obtained; if not, then the next best evidence

that can be obtained is admitted. As a general rule where a written document is to be used as proof, the original document must be produced and proved and where a fact can be proved by persons who actually saw or heard it, they must be called.

1.2 Hearsay in general terms prevents a person testifying to the truth of what he has been told by another person. Cross's formulation of hearsay is that:

"an assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted."

(Cross on Evidence (7th Edition 1990) p. 42)

1.3 This formulation covers not only the exclusion of assertions by persons who do not give oral evidence at the trial (which is hearsay in the strict sense of the term), but also the exclusion of previous statements by persons who do give evidence at the trial. Assertions may be made orally, in writing or by conduct. If made for the purpose of proving a fact, the assertion is caught by the common law rule and rendered inadmissible.

1.4 The applicability of the rule to assertions made orally or in writing is easy to see. "A" is not allowed to give evidence in Court of what "B" told him or what he saw in a document if the purpose is to assert the truth of what was heard or read. The rule also covers conduct which is assertive of a fact in issue. For instance a dying victim's signs to witnesses in response to the question of who had attacked him are said to be assertive of the truth of the identity of his attacker and would be inadmissible.

If English Common Law is applied some of a dying victim's signs to a witness may be admissible and others may not. There needs to be sufficient evidence that the deceased knew he was in a dying state at that time and has a hopeless expectation of imminent death.

1.5 A significant exception to the Hearsay Rule is the common law doctrine of Res Gestae, whereby a fact or statement of fact or opinion which is so closely associated in time, place and circumstances with some act or event which is in issue that it can be said to form part of the same transaction as the act or event in issue, is itself admissible in evidence. The justification given for the reception of such evidence is the light that it sheds upon the act or event in issue; in its absence, the transaction in question may not be fully or truly understood and may even appear to be meaningless, inexplicable or unintelligible. Evidence of both facts and statements may be received as part of the Res Gestae. The evidence which may be received as part of the Res Gestae may be broadly divided into four categories;

- (i) Statements by participants in or observers of events;
- (ii) Statements concerning the maker's performance of an act;
- (iii) Statements concerning the maker's state of mind or emotion; and
- (iv) Statements of physical sensation.

The application of the doctrine of Res Gestae within Jersey is far less developed, and its application within civil proceedings would not appear to have been tested before the Jersey Courts. However, in the criminal case of Lundy-v-Attorney General 1996 JLR 193 CA, the application of the doctrine within criminal cases was clearly accepted by the Court.

2. The Problems to be Addressed ([Contents List](#))

2.1 Overheard statements and other indirect evidence and documents which recite facts which might be highly relevant to the just determination of issues before the Court cannot be admitted as evidence of the facts covered by them.

2.2 For evidence produced by computers or other technology to be admissible before the Court it has to be adduced by the appearance in Court of the person operating the machine or if appropriate be supported

by an affidavit sworn by that person. It may also be necessary where human intervention in the process is involved for those who have intervened to give evidence before the Court. For example, where the originator of that data, say a meter reader or some other person involved in "logging" information, passes that information to a person who then inputs that data into a computer, both persons may need to give evidence. The meter reader's manual records are likely to have been destroyed shortly after inputting. The reliability of such evidence is clearly difficult to establish and often can at best rely upon assumptions.

2.3 The widespread use of computers, scanning devices, microfilm, the internet and other technology in all aspects of personal, professional and business life give rise to questions as to the legal implications of holding computer recorded data and document "imaging" and their use as evidence in legal proceedings.

2.4 The main questions to be addressed are:-

The implications of transferring computer generated records direct to computer disc, thus avoiding the need to print such records on paper. This also applies to customer statements, which may be currently transferred to microfilm after printing, but which could be retained on computer disc and not printed.

(2) Whether paper records received by a company could be transferred on to computer disc via a data image processing system and the original paper records destroyed.

(3) The admissibility of such records in evidence.

2.5 Many of the issues raised result from the application of relatively recent technology and as such have not yet been addressed by the Jersey Courts. The best evidence rule requires that the evidence should be the best the case will allow. Of obvious interest,

therefore, is the question of the destruction of original documents and their replacement with electronically recorded copies.

2.6 The States of Jersey have addressed this question to a limited extent in enacting the Companies (amendment No. 3) (Jersey) Law 1997, which, inter alia, substituted for article 202 of the Companies (Jersey) Law 1991 Articles 201A and 202 which enables the Registrar of Companies to record the information contained in documents in any form approved by the Finance and Economics Committee, that can itself be inspected and can be copied in legible form and, having done so, he is permitted to destroy the original documents immediately. Copies of or extracts from records so made, certified in writing by the Registrar, under his seal, as accurate, are admissible in evidence in all legal proceedings as of equal validity with the original record and as evidence of any fact stated in it of which direct oral evidence would be admissible.

2.7 The Bankers Books Evidence (Jersey) Law, 1986 also seeks to overcome some of the difficulty associated with the hearsay rule but gives rise to certain problems which have not yet been decided by the Courts.

2.8 The law contains a very wide definition of "bankers books", viz:-

"Art. 1 (2) To conform to other such references Expressions in this law relating to Abankers books@ include ledgers, day books, cash books, account books and other records used in the ordinary business of the bank, whether those records are in written form or are kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism" [underlining inserted]

2.9 Furthermore, Articles 2 and 3 of the Act provide that ".....a copy of any entry in a banker=s books shall in all legal proceedings be received as prima facie evidence of such entry....." (Article 2) provided that ".....it be first proved that the book was at the time of the making of

the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank." (Article 3 (1)).

2.10 The effect of Article 3(1) is uncertain, there having been no reported cases to date in which its application has been considered. This raises the question of whether documents received by the bank before being scanned, and the original destroyed, fall within the definition of the "ordinary books of the bank" - it is certainly arguable that they are actually copies of the ordinary books of the sender.

2.11 However, it is likely that these received records will be regarded as part of the "bankers books", as part of the "*.....other records used in the ordinary business of the bank.....*" (Article 1(2)).

2.12 A second potential stumbling block lies in relation to the verification of copies under Article 4, which provides that:-

"Art. 4 (1) - A copy of an entry in a banker's book shall not be received in evidence under this law unless it be further proved that the copy has been examined with the original entry and is correct.

Art. 4 (2) - Such proof shall be given by some person who has examined the copy with the original entry....."

2.13 The question which arises here is whether the term "original entry" refers to the entry in the original document from which the copy was made, as used by a company to be entered in its records, or whether the entry into a bank's bankers books, whether computer or otherwise, would constitute the Aoriginal@ against which a copy could be checked (although there is a discretion in RSC Ord. 38., r.3(2) (c) to order that evidence of any particular fact be given by copies of documents).

2.14 Since the question has not yet arisen in the Jersey Courts, it is interesting to note

that in relation to the English Bankers' Books Evidence Act 1879, where the requirement for checking the copy against the original is virtually identical, the courts have held that copies of letters written by a bank and contained in a file of its correspondence do not constitute bankers books (R-v-Dadson (1983) 77 Cr App Rep 91 (CA)).

2.15 As a result of this new technology it may be that a party to proceedings could be adversely and unfairly affected and a different decision given by the Court solely as a result of this rule of evidence.

3. The Position in Jersey [\(Contents List\)](#)

3.1 The position under Jersey law would appear to reflect the common law position concerning hearsay which prevailed within England and Wales prior to the enactment of legislation modifying the position within that jurisdiction. That position appears to have been approved by implication in a number of Jersey cases, many of which relate to criminal trials:

Attorney General v. Kelly [1982] JJ 275 CA;

This case clearly indicated the position in regard to hearsay, the Court stating at 282:

"The first question the Court has to decide is whether the additional evidence is legally admissible for the limited purpose proposed by the Attorney General. The Court has no doubt that it is. We have been referred to the case of Subramaniam v. Public Prosecutor [1956] I W.L.R. 965, and at page 970 the following principle is stated "Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made". That principle, it appears to

us, clearly sets out the law."

Attorney General v. Christopher Eugène Curtin (8 January 1992) Jersey Unreported Judgments RC:

The Court stated;

"The rule against hearsay is stated at Archbold - Criminal Pleading Evidence and Practice - 43rd edition, paragraph 11 - 3 at p.1084:

"Former statements of any person, whether or not he is a witness in the proceedings, may not be given in evidence if the purpose is to tender them as evidence of the truth of the matters asserted in them, unless they were made by a defendant and constitute admissions of fact, relevant to those proceedings."

It was not disputed that the evidence of that which the child had said was hearsay and therefore inadmissible."

Pacific Investments Limited v. Christensen and Others, (24 November 1995) Jersey Unreported Judgments,CA;

The Court stated that:

A"Mr Michel submitted that the Judgment in the T.R. Case, even if relevant in a non-legal sense, did not constitute evidence at all in this case. References to it, he said, ought not to have been included by Mr Moore in his affidavit, and, having been included, ought to be ignored. Hearsay evidence, with identification of its source, is permissible in an affidavit. Mr Michel submitted, however, that Mr Moore's references to Hoffmann J.'s Judgment were not merely simple hearsay, i.e. statements of what the Judge had said, but double hearsay, i.e. statements of what the Judge said he had derived from evidence in the T.R. Case. Mr Michel contended, on the authority of the English case of Savings & Investment Bank, Ltd. v. Gasco Investments (Netherlands) B.V. [1984] 1 WLR 271, that such double

hearsay is not admissible in an affidavit.

The significance of this case in clarifying the issue of hearsay within Jersey is questionable, since the Court stated "*It is not necessary to consider the authority of that decision or its applicability to the present case. There are other grounds upon which the findings of fact made in the TR Case, as distinct from the Judge's comments upon them, are admissible in this case against the Appellants*", going on to state that

"There is no sign in Hoffman J.'s judgment that he had had to resolve any conflict of evidence...The issues which did arise were issues of law, viz. whether the facts showed proper compliance with S.212 or justified the imposition of penalties of S.216"

Lundy v. Attorney General (1996) JLR 193 CA;

At 203; the Court again cited the case of Subramaniam v. Public Prosecutor in relation to hearsay as it applied within this jurisdiction.

3.2 The cases referred to above, with the exception of Pacific Investments Limited, were all criminal cases in which the Court appeared to accept and apply the hearsay rule as it is understood in the context of the law in England and Wales, and there can be little doubt that the Jersey Courts currently look to that jurisdiction for guidance. The position in civil cases is not at all clear and needs to be clarified. Comments from local practitioners would indicate that frequently hearsay evidence is submitted and accepted and not challenged by the opposing side, there being no reported cases where the Court has been called to rule on the matter.

4. The Position Under English Law [\(Contents List\)](#)

4.1 Although there had been some minor reforms concerned with such matters as particular forms of proof of documents and statutory certificates of declarations of certain facts, such as registers of births,

deaths and marriages and entries in bankers' books the first statutory intervention under English Law was the Evidence Act 1938. It reformed the hearsay rule by providing new exceptions for specific categories of documents. Although it dealt with wider categories of documents and records it applied only to documentation. Oral hearsay was left to the common law rules.

4.2 **The 1968 Reforms** ([Contents List](#))

4.2.1 This was followed by the Civil Evidence Act 1968. Section 2 of this Act, which governed the admissibility of hearsay evidence in most civil proceedings made all first-hand hearsay and much second-hand hearsay admissible provided certain conditions were satisfied.

4.2.2. Section 1(1) provided:-

"In any civil proceedings a statement other than one made by a person while giving oral evidence shall be admissible as evidence of any fact stated therein to the extent that it is also admissible by virtue of any provision of this part of this Act or by virtue of any other statutory provision or by agreement of the parties, but not otherwise."

4.2.3 Section 2(1) stated:-

"In any civil proceedings a statement made, whether orally or in a document or otherwise, by any person, whether called as a witness in those proceedings or not, shall, subject to this section and to the rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible."

The words 'statement' and 'document' in this section have the same definitions as in the Criminal Justice Act 1988;

4.2.4 Section 10 provided:-

'A document' includes, in addition to a document in writing -

(b) any photograph;

(d) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom;

"film" includes microfilm;

"statement" includes any representation of fact, whether made in words or otherwise."

4.2.5. Whether the court would treat documents stored on computer by imaging as a document in writing, or analogous to a photograph is a moot point, the term in subsection (d) *".....other device in which one or more visual images are embodied"* appearing wide enough to cover this possibility.

4.2.6. The admissibility of statements produced by computer is laid down in Section 5, which also contains the definition of computer;

Admissibility;

"Section 5(1) In any civil proceedings a statement contained in a document produced by a computer shall, subject to the rules of court, be admissible as evidence of any fact stated therein of which direct evidence would be admissible, if it is shown that the conditions mentioned in subsection (2) below are satisfied in relation to the statement and computer in question.

(2) *The said conditions are -*

(a) that the document containing the statement was produced by the computer during a period over which the computer was used

regularly to store and process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any body, whether corporate or not, or by any individual;

that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and

(d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities."

4.2.7. The effect of this section was to admit hearsay statements, including second-hand hearsay statements, contained in computer-produced documents.

4.2.8. Definition;

"Section 5(6) *Subject to subsection (3) above, in this part of the Act 'computer' means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.*"

4.2.9. It is noteworthy that there was direct reference to the storing of information on computer in this section, which would be precisely the situation envisaged by a company 'imaging' documents on to computer.

4.2.10 The effect of Section 5(3) was that 'computer' also means any combination of computers, or different computers operating in succession over the period in question. This appears to have removed any difficulty which may have been encountered by the transfer of the 'imaged' document data from one computer to another - the number of transfers appears immaterial to the admissibility of the information.

4.2.11 Furthermore, Section 5(5) stated that for the purposes of that part of the Act:

"(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment; [underlining inserted]

(b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the

purposes of those activities, by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to have been supplied to it in the course of those activities; [underlining inserted]

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment."

4.2.12 Section 5(5)(a) appears to have allowed for the supply of information by document imaging, while subsection (b) removed the difficulties which may have been encountered regarding the admissibility of documents supplied to a company and stored on computer by them by imaging, rather than those produced by them internally, and stored on computer contemporaneously.

4.2.13 It should be noted that the admissibility of any computer produced document is reliant on proof that the computer in question was operating properly at the time it was dealing with the document concerned. These criteria were set out in Section 5(2);

The said conditions are-

"(a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for

the purposes of any activities regularly carried on over that period.....".

"(c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents;"

4.2.14 Section 8 provided for rules of court to be made, compliance with which was to be regarded as a precondition to admissibility of hearsay evidence. The major safeguard created by the rules, which were made and which were complex, was the requirement to give notice of the intention to adduce hearsay evidence.

4.3 The English Law Commissions Recommendations in 1993 ([Contents List](#))

4.3.1 The English Law Commission was requested in 1989 by the Lord Chancellor to consider the Law of England and Wales relating to admissibility of hearsay evidence in civil proceedings and to advise 'inter alia' whether the rule against hearsay (as modified by the Civil Evidence Acts) should be retained in whole or in part. The Law Commission published a Consultation Paper provisionally recommending that the rule excluding hearsay evidence should be abolished and the views of the persons and bodies whom they consulted supported their own provisional conclusions. The general view was that the current statutory regime was unwieldy, that the law was unnecessarily difficult to understand and in some instances outmoded and that the rules governing its practical application were too

complicated.

4.3.2. The English Law Commission found that recent developments in the law and practice of civil litigation point to a new approach where the main emphasis is upon ensuring that, so far as possible and subject to considerations of reliability and weight, all relevant evidence is capable of being adduced. Another part of this new approach is that litigation is conducted in a more open climate, with more emphasis upon identifying and refining the issues in advance which in turn gives parties less opportunity to take advantage of technical points at the trial stage.

4.3.3 The English Law Commission was particularly impressed by comments from a number of judges and practitioners who were concerned that intelligent and rational witnesses and litigants were understandably confused by and dissatisfied with the existence of rules of evidence which sometimes operated to prevent them from giving evidence of matters which they rightly perceived as relevant and cogent.

4.3.4 Copies of the provisional conclusions of the English Law Commission which formed part of their Consultation Paper No. 117 and the Summary of Recommendations forming part of their Report presented to Parliament by the Lord High Chancellor are attached to the present Consultation Paper.

4.3.5 The English Law Commission's report and recommendations were presented to Parliament in September 1993 and as a result the Civil Evidence Act 1995 was enacted on the 8th November 1995, and came into force on 31st January 1997.

4.4 Civil Evidence Act 1995 ([Contents List](#))

4.4.1 This Act repealed Part 1 Sections 1 to 10 of Civil Evidence Act 1968 which related to hearsay evidence. The main provisions in the 1995 Act are the following:-

Section 1

(1) In Civil proceedings evidence shall not be excluded on the ground that it is hearsay.

(2) In this Act -

(a)
'hearsay'
means
a
statement
made
otherwise
than
by a
person
while
giving
oral
evidence
in
the
proceedings
in
which
it is
tendered
as
evidence
of
the
matters
stated;
and

(b) references to hearsay include hearsay of whatever degree.

4.4.2 Sections 2 to 5 go on to impose a number of safeguards in regard to the admissibility of hearsay evidence, such as requiring the party proposing to adduce the hearsay evidence to give notice to the other parties to the proceedings (Section 2), giving the other parties to the proceedings power to call the person who made the hearsay statement and cross examine him if not called by the party seeking to adduce his evidence (Section 3), setting out five factors to be taken into account by the Court in assessing the weight to be given to the hearsay evidence adduced (Section 4),

and providing that hearsay evidence shall not be admitted if at the time it was made the maker was not competent (Section 5).

4.4.3 Of direct relevance to the question of the admissibility of computer generated/stored records set out above, is Section 8:

8.(1) where a statement contained in a document is admissible as evidence in civil proceedings, it may be proved -

(a) by the production of that document, or

(b) whether or not the document is still in existence, by the

production of a copy of that document or of the material part of it, authenticated in such manner as the court may approve.

8.(2) It is immaterial for this purpose how many removes there are between a copy and the original.

4.4.4 In regard to the above, Section 13 contains the following definitions:

"document" means anything in which information of any description is recorded, and 'copy' in relation to a document, means anything on to which

information recorded in the document has been copied, by whatever means and whether directly or indirectly;

'statement' means any representation of fact or opinion, however made."

4.4.5 Consequently, the Civil Evidence Act 1995 removes the problems associated with the admissibility of documents 'scanned' into a computer and then reproduced, giving the Court discretion to determine the appropriate test for authentication of the document in the circumstances of each case.

4.4.6 The Civil Evidence Act 1995 goes on to state -

9.(1) A document which is shown to form part of the records of a business or public authority may be received in evidence in civil proceedings without further proof.

9.(2) a document shall be taken to form part of the records of a business or public authority if there is produced to the court a certificate to that

effect signed by an officer of the business or authority to which the records belong.

For this purpose -

(a) a document purporting to be

*a
certificate
signed
by
an
officer
of a
business
or
public
authority
shall
be
deemed
to
have
been
duly
given
by
an
officer
and
signed
by
him;
and*

*(b) a
certificate
shall
be
treated
as
signed
by a
person
if it
purports
to
bear
a
facsimile
of
his
signature.*

*9.(3) The absence of an
entry in the records of a
business or public
authority may be proved*

in civil proceedings by affidavit of an officer of the business or authority to which the records belong.

9.(4) *In this section -*

"records" means records in whatever form;

"business" includes any activity regularly carried out over a period of time, whether for profit or not, by any body (whether corporate or not) or by an individual;

"officer" includes any person occupying a responsible position in relation to the relevant activities of the business or public authority or in relation to its records; and

"public authority" includes any public or statutory undertaking, any government department and any person holding office under Her Majesty.

9.(5) *The court may, having regard to the circumstances of the case, direct that all or any of the above provisions of this section do not apply in relation to a particular document or records, or description of documents or records.*

4.4.7 The effect of Section 9 is that records made in the course of business are admissible as evidence at the discretion of the Court. This is of particular significance

as automatic computer record keeping systems are increasingly used.

4.4.8 Matters to be taken into consideration by the court in estimating the weight to be given to hearsay evidence are set out in Section 4:-

(1) In estimating the weight (if any) to be given to hearsay evidence in

civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following:-

(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;

(b) whether the original statement was made contemporaneously with the

occurrence or existence of the matters stated;

(c) whether the evidence involves multiple hearsay;

(d) whether any person involved had any motive to conceal or misrepresent matters;

(e) whether the original

statement was an edited account, or was made in

collaboration with another or for a particular purpose;

(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

5. Conclusions and Recommendations ([Contents List](#))

5.1 There are a number of choices:-

1. make no changes.

2. introduce statutory reform along the lines of the UKs Civil Evidence Act 1968.

3. introduce statutory reform along the lines of the UKs Civil Evidence Act 1995.

introduce statutory reforms which do not abolish the hearsay rule but which nevertheless permit certain types of evidence, and particularly computer generated evidence, to be admissible as an exception to the hearsay rule and which follow rules partly based on the 1968 Act as modernised to meet current trends.

5.2. As the Royal Court has tended to look to English common law decisions on the question of evidence, and hearsay in particular, there may be advantages in running alongside the new English rules.

There may be a number of reasons for doing so:

(1) the convenience for evidence collection from England as the closest trading country and assistance that may be gained from professionals there;

(2) having the ability to consider judicial decisions based upon similar statutory wording;

(3) to facilitate a similar outcome to a case whether or not it has cross border aspects;

(4) avoiding the unpredictable by following the fourth choice stated above;

(5) speed of drafting and therefore implementation of a new law.

5.3 The provisional view of the Commission is that the hearsay rule in civil proceedings should be abolished by enacting legislation along the lines of the U.K. Civil Evidence Act,1995.

6. Questions for Consultation ([Contents List](#))

6.1 The purpose of this Consultation Paper is to put the issues in the public domain for comment and suggestions. Before making our final report, therefore, we invite responses from interested parties both generally upon the contents of this paper and, more particularly, upon the following questions:

A. Should the common law position be amended to abolish the hearsay rule in civil proceedings?

B. If so, should the provisions of the 1995

UK Act be adopted and, if not, what should be adopted?

C. Alternatively should the provisions of the 1968 UK Act be adopted?

D. Is there any other approach which would be preferable?

Should the Commissioners look at the hearsay rule in criminal proceedings generally?

Should the Commissioners look at the hearsay rule only in certain categories of criminal proceedings: for instance financial fraud or wrongdoings with an international element which might affect the standing of the Island abroad?

Are correspondents aware of any particular difficulties which have arisen either in theory or in practice as a result of the 1968 or 1995 UK Acts?

Have correspondents, in the capacity of litigants, lawyers, witnesses or experts experienced difficulties or perhaps benefited as a result of the state of the current UK law in this area?

Can correspondents identify any foreseeable effects, whether good or adverse, from following any of the choices available to Jersey law

identified in this paper?

6.2 Responses to this Consultation Paper should be made in writing to:

The Jersey Law Commission, The Best Evidence Rule in Civil Proceedings,

PO Box 87, St Helier, Jersey, JE4 8PX. Those who respond may be invited to meet the Commissioners to discuss their comments, and possibly also to participate in a symposium which the Commissioners may decide to organise prior to compiling their final report and recommendations.

APPENDIX A - [Provisional Conclusions of the English Law Commission](#)

APPENDIX B - [Summary of Recommendations of the English Law Commission](#)

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PO Box 87
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Jersey
JE4 8PX

Fax no: 01534 609333

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