

BASIC LAW

BULLETIN



Editor's Note

In the “*Focus*” section of this issue, we review some constitutional remedies developed by the HKSAR courts since Reunification. Constitutional remedies refer to the measures the court can take when it finds a piece of legislation unconstitutional. The review shows that the courts have become more willing to apply constitutional remedies beyond the traditional approach of declaration of invalidity. Alternative remedies of remedial interpretation and temporary suspension orders have been discussed and granted by the CFA in recent cases. Whether the HKSAR courts have jurisdiction to grant remedies such as temporary validity and prospective overruling still awaits judicial resolution.

We also have our usual columns “*LegCo President's Decision on Member's Bill*” and “*Judgment Update*”. In the latter column, there are summaries of three recent judgments of the CFA and one CA judgment concerning the following matters :

- The choice of venue of trial that fell within the scope of the prosecutorial prerogative to be exercised by the Secretary for Justice (“SJ”)

under BL 63 (CFA).

- In considering the question of payment of Government rent under s. 4 of the Government Rent (Assessment and Collections) Ordinance (Cap. 515), whether “lawful successor” in BL 122 includes a person who had “succeeded” to the relevant land by an *inter vivos* gift (CA).
- Whether the presence of the Legal Adviser to the Medical Council at the Council's deliberations and the Adviser's drafting of its decision were lawful and would not compromise the competence, independence, impartiality or fairness of the Council's proceedings (CFA).
- Whether s. 67(3) of the Legislative Council Ordinance (Cap. 542), barring any further appeal from the CFI on an election petition, was inconsistent with BL 82 which provides that the power of final adjudication shall be vested in the CFA (CFA).

In “*Sidelights*”, there is an updated list of members of the Committee for the Basic Law of the HKSAR under the NPCSC.

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