

70 cases awaiting drug law ruling

DEPUTY Crown prosecutor Mr Grenville Cross told the Court of Appeal yesterday that about 70 cases in the Magistrates' Court, the District Court and the High Court were known to have been adjourned or were in the process of being adjourned pending a decision on whether the Dangerous Drugs Ordinance contravened the Bill of Rights.

The question of law had been referred to the higher court by Mr Justice Ryan when accused drug smuggler Sin Yau-ming appeared on a charge of possessing 337 grams of heroin for trafficking, which he denied.

Under the drugs ordinance, anyone found to have the keys to a premises that contains heroin is presumed to be guilty of possession

COURTS

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and to have known the nature of the drug, and if the amount of heroin is more than five grams, then the person is also presumed to have the substance for trafficking until the contrary is proved.

But the Bill of Rights gives everyone the right to be presumed innocent until proven guilty and any pre-existing law that is inconsistent with the newly enacted ordinance is repealed.

Counsel for Sin, Mr Daniel Fung, QC, Mr Johnny Mok and Mr John Mullick, while accepting that the presumption was legitimate to curb drug trafficking, contended that it failed to pass the test of reasonableness.

The triggered level in the

triple presumptions was unrealistic and might give rise to abuse and a risk that innocent people would get caught, they argued.

Mr Cross submitted that the burden was always on the Crown to prove the fact that gave rise to the statutory presumption beyond a reasonable doubt before the presumption could be triggered.

There was no conflict of any fundamental rule of natural justice in the statutory presumption provided it was rebuttable and reasonable, he said, contending that the presumption of innocence came within the phase of any fundamental rule of justice.

Furthermore, he said, a

presumption of accountability was quite different from a presumption of guilt.

A balance had to be struck between the importance of what was at stake — in Hongkong terms, the notorious drug trade — and also maintaining the rights of the individual, Mr Cross said.

He accepted that there must be some rational connection between the intention and presumption, which also had to be subject to the reasonableness test.

To consider whether half a gram of heroin was a reasonable amount to trigger off the trafficking presumption, one had to look at the consumption of the addicts.

The hearing, before Mr Justice Silke, Mr Justice Penlington and Mr Justice Kempster, continues on Tuesday.