

David Johnston QC

Year of Call: 1992 Year of Silk: 2005

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Professional Career to date

Devil Masters: The Hon. Lord Reed, Andrew J. Lamb, QC.

2005: Silk

2000-2003: Visiting Professor, Université de Paris V

2000: Visiting Professor, University of Osaka Law School

2000 (to date): Honorary Professor, University of Edinburgh Law School

1999: Visiting Professor, Université de Paris I

1996, 1998: Senior Visiting Fellow, University of California at Berkeley Law School

1993-99: Regius Professor of Civil Law, University of Cambridge and Fellow of Christ's College

1992: Advocate

1987: Visiting Fellow, University of Michigan Law School

1985-89: Research Fellow, Christ's College, Cambridge

1985-86: Visiting scholar, Institut für Rechtsgeschichte, University of Freiburg

Education & Professional Qualifications

BA (1982), MA (1986), PhD (1986), LLD (2001), St John's College, Cambridge

Diploma in Legal Practice, Edinburgh University (1990)

FRSE (2016)

Areas of Expertise

- Public Law, Judicial Review and Human Rights
- EU
- Company, Corporate Finance and Tax
- Competition and Public Procurement
- Commercial Contracts

Professional Experience

In public law, including human rights, David Johnston regularly advises various public bodies in relation to such things as statutory interpretation, *vires*, and freedom of information. He has been involved in cases dealing not just with administrative law but also with the constitutional position since devolution, notably a case concerning the constitutional status of the Scottish Parliament; and a challenge to the validity of a ban on hunting with dogs. In commercial law he has been involved in many cases dealing with corporate or contractual issues. Some of these have involved issues of prescription on which, as the author of *Prescription and Limitation*, he regularly advises.

In the area of taxation he has been involved in a number of complex cases, notably one concerning insurance company taxation, and a Supreme Court case dealing with taxation of employment-related securities.

Recent Cases

Public law

Wightman v Secretary of State for Exiting the European Union [2018] CSOH 61: whether the court should refer the question of the revocability of the United Kingdom's notification that it intended to withdraw from the European Union to the Court of Justice of the European Union

AA v Secretary of State for Business, Energy and Industrial Strategy [2018] CSOH 54: whether the Community law principle of equivalence or effectiveness required employment tribunals to have power to grant diligence on the dependence

O and N v Advocate General [2018] CSOH 7: whether regulations providing for financial and other support for asylum seekers were unlawful owing (among other things) to incompatibility with EU law, ECHR, the EU Charter of Fundamental Rights; and to failure of the Secretary of State to act in accordance with the public sector equality duty

Romein v Advocate General [2018] UKSC 6: British nationality issues

MA [2017] CSIH 46: whether the 'same roof' rule under the Criminal Injuries Compensation Scheme is compatible with Convention rights (under appeal to UKSC)

Gormley v Scottish Information Commissioner CSIH 23 June 2017 (unreported): freedom of information request to Police Scotland to disclose the number of covert human intelligence sources operating within Scotland during a specified period

Petroineos Manufacturing Scotland Ltd v Clydeport Operations Ltd [2017] CSOH 49: jurisdiction of Queen's Harbourmaster to levy conservancy charges within the port of Clyde

Campbell v Scottish Ministers [2017] CSOH 35: whether handcuffing of a prisoner during hospital visits infringed his Convention rights

North Lanarkshire Council v Scottish Ministers: [2016] CSIH 69: reasons challenge to planning decision

Gibson v Scottish Ministers [2016] CSIH 10: criteria for grant of protective expenses order

Gilroy v Scottish Information Commissioner [2016] CSIH 18: personal data and freedom of information

Beggs v Scottish Information Commissioner [2015] SC 520: personal data and freedom of information

Murnin v Scottish Legal Complaints Commission 2013 SC 97: challenge to determination by commission

Perry v SOCA [2012] UKSC 35: extraterritorial jurisdiction in proceeds of crime

Doogan v GGHB [2012] CSOH 32: midwives' right to conscientious objection

Eba v Secretary of State for Work and Pensions [2011] UKSC 29: scope for judicial review of decisions by the Upper Tribunal.

Axa General Insurance Ltd [2011] CSIH 31: challenge to legislation of the Scottish Parliament on ECHR and common-law grounds.

Capacity Building Project v City of Edinburgh Council [2011] CSOH 58: common good; race relations

South Lanarkshire Council v Scottish Information Commissioner [2012] CSIH 30: personal data and freedom of information

McGinty v Scottish Ministers [2011] CSOH 163: challenge to national planning framework

K v Principal Reporter [2010] UKSC 56: appeal concerning rights of unmarried fathers to participate in children's hearings; appellant sought declaration of incompatibility under the Human Rights Act 1998.

Scottish Ministers v Mental Health Tribunal for Scotland & JK; also further appeal re MM [2009] CSIH 9 and 66: appeal regarding test mental health tribunals ought to apply in lifting a restriction order applying to a person suffering from a mental disorder.

Glasgow City Council v Scottish Information Commissioner [2009] CSIH 73: appeal against decision by Information Commissioner to order release of property inquiry certificates.

Lightways (Contractors) Ltd v North Ayrshire Council [2008] CSOH 91: public procurement challenge on adequacy of procurement and assessment criteria.

Fergie v Scottish Ministers [2008] CSOH 117: judicial review of government ex gratia payments scheme re Hepatitis C contracted from NHS blood products

Barachander Farm v Scottish Ministers [2008] CSIH 15: appeal in relation to sheep annual premium payments under EU common agricultural policy.

WD v Glasgow City Council [2007] CSIH 72: appeal in relation to placing requests for children with additional support needs.

Argyll & Bute Council v Scottish Public Services Ombudsman [2007] CSOH 168: judicial review of ombudsman's report on provision of free personal care.

Billig v Law Society of Scotland 2007 SC 32: judicial review regarding payment from the Law Society's Guarantee Fund.

McCall v Scottish Ministers 2006 SC 266: judicial review of legal aid regulations.

Al Fayed v Scottish Ministers 2004 SC 568: article 2 ECHR; entitlement to inquiry into death.

Abna v Scottish Ministers 2004 SLT 176: interim suspension of regulations based on EU Directive.

Adams v Scottish Ministers 2003 SC 171, 2004 SC 665: challenge to validity of Protection of Wild Mammals (Scotland) Act 2002

RSPB v Secretary of State for Scotland 2000 SLT 1272: EU law/Habitats Directive.

Whaley v Lord Watson 2000 SC 340: constitutional status of Scottish Parliament.

The Scotsman v Presiding Officer of the Scottish Parliament(unreported, Outer House, 1999): standing orders of Scottish Parliament.

Commercial law

Takeover Panel v King [2018] CSIH 30: court order obtained by Takeover Panel ordaining respondent to make a mandatory offer to acquire all shares in a company not already controlled by him or his associates

Wishart, Petitioner [2009] CSIH 65, 2009 SLT 812: appeal regarding new provisions of the Companies Act 2006 on raising derivative proceedings and competency of Wallersteiner costs orders.

Link Housing Association Ltd v PBL Construction [2009] CSIH 54: prescription in relation to construction claim.

Greck v Henderson Asia Pacific Equity Partners (FP) LP [2008] CSOH 2: claim by former partner to participate in gains made by private-equity partnership.

Royal Insurance (UK) Ltd v AMEC Construction (Scotland) Ltd and others 2008 SC 201 and also

[2008] CSOH 107: title to sue and prescription in construction dispute.

Calor Gas v Flogas [2008] CSOH 13: contract void for infringement of EU competition law.

Wipfel Ltd v Auchlochan Developments Ltd [2006] CSOH 183: damages provisions in missives.

W S Karoulias SA v The Drambuie Liqueur Co Ltd 2005 SLT 813: formation of contract.

Tor Corporate AS v China National Star Petroleum Corporation (2005; arbitration) management of North Sea drilling rig; related commercial actions continue.

Royal Bank of Scotland v Bannermann Johnstone Maclay 2003 SC 125, 2005 SC 437: auditors' professional negligence.

Jackson v Royal Bank of Scotland 2002 SLT 1123: guarantee; reduction on insolvency.

Dollar Land Ltd v CIN Properties 1998 SC (HL) 90: commercial lease/unjustified enrichment.

Tax

Scottish Widows plc v HM Revenue & Customs [2011] UKSC 32: appeal regarding tax treatment of life company demutualisation scheme.

Grays Timber Products Ltd v HMRC [2010] UKSC 4: market value of employment-related securities.

Pattullo v HMRC [2009] CSOH 137: discovery powers under section 20 Taxes Management Act 1970

Al Fayed v Commissioners of Inland Revenue No 12004 SC 745: judicial review; whether agreement ultra vires the Inland Revenue.

Al Fayed v Commissioners of Inland Revenue No 2 (unreported, Outer House, 2003): judicial review about tax investigation.

Other

Gordon v CRBP [2017] UKSC 75: prescription and solicitors' negligence (on appeal to UKSC)

Penrose Inquiry into HCV and HIV acquired infection from NHS treatment with blood and blood products: counsel for Scottish Government (2011-12)

Spread Trustee Co v Hutcheson [2011] UKPC 13: trustees' exclusion of liability for gross negligence

Kusz v Buchanan Burton [2009] CSIH 63: prescription and solicitors' negligence.

Countess Cawdor v Earl Cawdor [2007] CSIH 3; [2005] CSOH 152; prescription in relation to obligations of pension fund trustees.

Henderson v 3052775 Nova Scotia Ltd 2006 SC (HL) 85: summary decree.

Earl of Balfour, Petitioner 2003 SC (HL) 1: disentailing estate.

Adams v Thorntons WS 2005 SC 30: prescription in relation to missives.

BP v Chevron Shipping Corporation (and related actions) (2004; tanker collision/negligence, prescription, and personal bar (settled)).

Pan Am Airways Corp v Al Megrahi & others (2004-05; damages for destruction of Pan Am flight 103 aircraft (settled)).

Atlantic Telecommunications GmbH, Petitioner 2004 SLT 1031: issues of private international law and insolvency law.

Union Carbide v BP 1995 SC 398: intellectual property/cross border issues.

Advocates Courts & Tribunals

Supreme Court; House of Lords; Court of Session; Sheriff Court; Arbitrations.

Advocates Appointments & Memberships

2015: Commissioner (part-time), Scottish Law Commission

2009 (to date): Member of panel of chairmen of Police Appeal Tribunals

2006 (to date): Member of panel of legal advisers to Faculty and Institute of Actuaries

2005 (to date): Member of UK delegation to CCBE (Council of the Bars of Europe) 1995-2000: Joint General Editor,

Cambridge Studies in International and Comparative Law (Cambridge University Press)

1997-2002: Member of Advisory Board, *Edinburgh Law Review*

Publications

Books

On a Singular Book of Cervidius Scaevola (Berlin, 1987)

The Roman Law of Trusts (Oxford, 1988)

Roman Law in Context (Cambridge, 1999)

Prescription and Limitation (Edinburgh, second edition 2012)

Edited Books

Unjustified Enrichment: Key Issues in Comparative Perspective (Cambridge, 2002) edited with Prof. R. Zimmermann

Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry (Oxford, 2013), edited with Profs A. Burrows and R. Zimmermann

The Cambridge Companion to Roman Law (Cambridge, 2015)

Articles (a selection only)

'Lord Rodger of Earlsferry' Oxford Dictionary of National Biography(2014)

'JA Pye (Oxford) Ltd v UK: deprivation of property rights and prescription': in (2006) 10 Edinburgh Law Review 277-82

(with P. Sutherland) 'Contracts for the benefit of third parties': in R. Zimmermann, D. Visser and K. Reid (eds) Mixed Systems in Comparative Perspective(Oxford, 2004) 208-39

'Unjustified enrichment: surveying the landscape': in D. Johnston and R. Zimmermann (eds.), Unjustified Enrichment: Key Issues in Comparative Perspective (Cambridge, 2002) 3-33

'Appointments and disappointments: White v Jones in Rome and today' (2000) 53 Current Legal Problems 283-301

'Breach of contract': in K. Reid and R. Zimmermann (eds.), A History of Private Law in Scotland

(Oxford, 2000) II 175-94

'The renewal of the old', inaugural lecture published Cambridge, 1996; also in (1997) 56 Cambridge Law Journal 80-95

'Limiting liability: Roman law and the civil law tradition', (1995) 70 Chicago-Kent Law Review 1515-38

'Owners and neighbours: from Rome to Scotland' in R. Evans-Jones (ed.), The Civil Law Tradition in Scotland (Stair Society; Edinburgh, 1995) 176-97

'The general influence of Roman institutions of state and public law' in D. Carey Miller and R. Zimmermann (eds.), The Civilian Tradition and Scots Law (Berlin, 1997) 87-101

'Sale and transfer of title in Roman and Scots law' in A. Lewis (ed.), The Roman Law Tradition (Cambridge, 1994) 182-98

'Justinian's Digest: the interpretation of interpolation', (1989) 9 Oxford Journal of Legal Studies 149-66

'Prohibitions and perpetuities: family settlements in Roman law', (1985) 102 Zeitschrift der Savigny-Stiftung für Rechtsgeschichte 220-90 Translation (from French)

R. C. van Caenegem, An Historical Introduction to Private Law (Cambridge, 1992)

Directories

Chambers recommended.

Legal 500 recommended.