

## David Thomson QC

Year of Call: 2004 Year of Silk: 2017

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### Professional Career to date

Devilmasters: C. R. K. Sandison QC; A. M. Clark QC; J. Reilly

June 2004 to date: Practising Member of the Faculty of Advocates

October 2003 - June 2004: Devil

September 1997 - September 2003: Litigation solicitor with various commercial law firms, including McGrigors and, latterly, DLA Piper.

September 1995 - September 1997: Trainee Solicitor, Steedman Ramage WS, Solicitors, Edinburgh

### Education & Professional Qualifications

#### 1998: College of Law

Qualified Lawyers Transfer Test; admitted as a solicitor in England & Wales

#### 1990-1995: University of Glasgow

1995 - Diploma in Legal Practice

1994 - LL.B. (Hons) (Public Law)

#### 1978 – 1990: Jordanhill College School, Glasgow

### Areas of Expertise

- Commercial Contracts
- Insolvency
- Company, Corporate Finance and Tax
- Construction and Engineering
- Commercial Property
- Professional Liability
- Public Law, Judicial Review and Human Rights
- Competition and Public Procurement
- Alternative Dispute Resolution

### Professional Experience

David Thomson is recommended in the legal directories in respect of all of his principal areas of practice. Notably, he is ranked in the latest (2016) edition of Chambers & Partners as one of the "Stars at the Bar" in Scotland, on the basis of his Band 1 ranking in Company, Real Estate Litigation and Restructuring/Insolvency as well as his ranking as a leading junior in Commercial Dispute Resolution.

An experienced Advocate, he has appeared in several important appeals before the United Kingdom Supreme Court and appears regularly in the Outer and Inner Houses of the Court of Session (including, in particular, the Commercial Court) and the Sheriff Courts. He has also appeared before the Lands Tribunal for Scotland, the Scottish Land Court, the Upper Tribunal and a variety of other courts and tribunals. He has conducted a number of substantial commercial arbitrations.

David practises exclusively in commercial litigation and public law, with particular emphasis on commercial property and leasing, commercial contracts and insolvency litigation.

David regularly acts on behalf of insolvency practitioners and banks, as well as, in cases concerning personal insolvency, The Accountant in Bankruptcy and trustees in sequestration.

David also has a significant practice in commercial property and leasing litigation, and indeed in general commercial litigation, as well as being

experienced in construction claims. He is also frequently instructed to act for insurers in the defence of professional negligence claims, most frequently involving claims against solicitors.

David has been a Standing Junior to the Advocate General for Scotland since 2009, having previously been a Standing Junior to the Scottish Ministers from 2005 to 2009. In his capacity as a Standing Junior to the Advocate General, David principally deals with disqualification proceedings under The Company Directors Disqualification Act 1986 and other company/insolvency matters on behalf of the UK Government. David's standing as a leading practitioner in this field is recognised by the legal directories and reflected in his position as Scottish Editor of the leading work on company director disqualification, Mithani.

#### **Recent Cases**

*Tonsley (Strathclyde) Limited and another v Scottish Enterprise* [2016] CSOH 138  
Commercial leases; dilapidations; contractual construction

*ASA International Limited v Kashmiri Properties* [2016] CSIH 70  
(Inner House) Implied servitudes

*Balgray Limited v Hodgson* [2016] CSIH 55; 2016 GWD 22-390  
(Inner House) Agricultural holdings; validity of notices

*Dolby Medical Home Respiratory Care Ltd v Mortara Dolby UK Limited* [2016] CSOH 74  
Commercial leases; dilapidations; contractual construction; reasonableness of settlement

*Apcoa Parking (UK) Limited v Crosslands Properties Limited* [2016] CSOH 63  
Commercial contracts; construction; development agreements; mutuality of contracts

*Zurich Insurance plc v Coralpeak Limited* [2016] CSOH 43  
Insurance; materiality of terms; recklessness

*SDG Tulloch Homes Limited v European Development Company (Hotels) Limited* [2016] CSOH 36  
Civil procedure; competency of joint and several conclusions; relevancy; quantification and measure of damages

*Ramsden v Santon (Highlands) Limited* 2016 SCLR 89  
Res judicata; missives; reductions; consumer protection

*Marriott v Greenbelt Group Limited* LTS/TC/2014/27  
Lands Tribunal for Scotland) Title conditions; validity

*HM Secretary of State for Business Innovation & Skills v Adedapo* [2016] CSOH 152  
Company Directors Disqualification Act 1986; mandatory disqualification; trading to the detriment of HMRC; lower bracket disqualification

*Murray Group Holdings Ltd (in liquidation) v HM Revenue & Customs* 2015 SLT 765  
(Inner House) Taxation; employee benefit trusts

*3052775 Nova Scotia Limited v Henderson* 2015 SLT 691  
Civil procedure; decrees by default; reduction; liquidation

*HM Secretary of State for Business Innovation & Skills v Russell* [2015] CSOH 128  
Company Directors Disqualification Act 1986; mandatory disqualification; trading to the detriment of HMRC: middle bracket disqualification

*BNP Paribas Securities Services Trust Company (Jersey) Limited v Mothercare (UK) Limited* 2015 Hous LR 42; [2015] CSOH 47  
Commercial leases; dilapidations; remits to person of skill; directions

*HM Secretary of State for Business Innovation & Skills v Drummond* [2015] CSOH 45  
Company Directors Disqualification Act 1986; mandatory disqualification; de facto directorship; appropriation of company assets; connected person; upper bracket disqualification

*Frank Houlgate Investment Company Ltd v Biggart Baillie LLP* [2014] CSIH 79  
(Inner House) Liability of solicitor for fraud of his client

*HM Secretary of State for Business Innovation & Skills v Craig Whyte* [2014] CSOH 148  
Company Directors Disqualification Act 1986; disqualification for maximum period of 15 years

*Henderson, Liquidator of Letham Grange Development Company Limited v Foxworth Investments Limited and another*[2014] 1 WLR 2600; [2014] UKSC 41 (United Kingdom Supreme Court) Insolvency; gratuitous alienations; civil practice; principles upon which appellate courts act in reviewing findings in fact

*Grove Investments Ltd v Cape Building Products Limited*[2014] CSIH 43  
(Inner House) Commercial leasing; dilapidations; cross-checking of loss by reference to diminution in value

*Kippax Limited v Glasgow Harbour Development Ltd*[2014] CSOH 29  
Contract for development of land; contractual construction

*Cramaso LLP v Reidhaven's Trs*2014 SLT 521; [2014] UKSC 9  
(United Kingdom Supreme Court) Negligent misrepresentation; continuing representations

*Wheeldon's Exr v Spence's Exr*[2014] CSOH 69  
Civil procedure; reduction; wills; the "rule against offside goals"

*Burgerking Ltd v Castlebrook Holdings Ltd*[2014] CSOH 36  
Commercial leasing; sub-letting; whether consent unreasonably withheld in the case of a newly incorporated company

*Child Maintenance and Enforcement Commission Child Support Agency v Roy*[2013] CSIH 105  
(Inner House) Child support; liability orders; committal proceedings; enforcement

*Child Maintenance and Enforcement Commission Child Support Agency v Wilson*2014 SLT 46  
(Inner House) Child support; liability orders; committal proceedings; enforcement

*Forest Bio Products Ltd v Forever Fuels Ltd*[2013] CSIH 103  
(Inner House) Contractual construction; sale of business

*Moness Country Club v First National Trustee Co Ltd*[2013] CSOH 188  
Time share management; trustees; appointment and removal

*Ross v Morley*[2013] CSOH 175  
Civil procedure; pleadings; prescription; constructive trusts

*J & A Construction (Scotland) Ltd v Windex Ltd*[2013] CSOH 170  
Construction; enforcement of adjudicator's award; balancing of accounts in bankruptcy

*Frank Houlgate Investment Co Ltd v Biggart Baillie LLP* 2013 SLT 993; [2013] PNLR 25; 2010 SLT 527  
Liability of solicitor for fraud of his client; and (at debate) professional negligence, scope of duty of care; breach of warranty of authority

*Prow v Argyll & Bute Council* [2013] CSIH 23; [2012] CSOH 77  
Rent review; notices; "reasonable recipient test"; personal bar; contractual construction.

*Kiani Petitioner* [2013] CSOH 121  
Company Directors Disqualification Act; petition for judicial review of Secretary of State's decision to seek disqualification order

*HM Secretary of State for Business Innovation & Skills v Reza* [2013] CSOH 86  
Company Directors Disqualification Act 1986; mandatory disqualification; abrogation of duties; lower bracket disqualification

*HM Secretary of State for Business Innovation & Skills v Bloch* [2013] CSOH 57  
Company Directors Disqualification Act 1986; mandatory disqualification; asset stripping; middle bracket disqualification

*Kipling v Dunbar Bank plc* [2012] CSOH 40; 2012 GWD 12-223  
Applicable test for the grant and recall of interim orders; banking; personal guarantees.

*MacDonald v Pollock* 2012 SLT 462  
(Inner House) Sale of goods; implied term as to satisfactory quality; sale "in the course of a business"; examination of goods; rejection.

*Aberdeen City Council v Stewart Milne Group Ltd* [2011] UKSC 56; 2012 SLT 205  
(United Kingdom Supreme Court) Contractual construction; overage payment provisions

*Parkes v MacGregor and another* [2011] CSIH 69; 2011 GWD 38-776  
(Inner House) Bankruptcy; reduction of sequestration

*Khaliq v Londis (Holdings) Limited* 2010 SC 432  
(Inner House) "Melville Monument liability"

*Frank Houlgate Investment Co Ltd v Biggart Baillie LLP* 2010 SLT 527  
Professional negligence; scope of duty of care; breach of warranty of authority

*Primary Health Care Centres (Broadford) Ltd v Humphrey & Ors* [2010] CSOH 129  
Res judicata; rights of relief among co-obligants

*Secretary of State for Business Innovation & Skills v Smith* 2010 SLT (Sh Ct) 26  
Directors' disqualification; section 16 notice requirements; title to sue following departmental reorganisation; expenses

*Bird v Bank of Scotland* [2010] CSOH 162; 2010 GWD 1-34  
Fraud; liability of principal for fraud of agent; solicitor/client relationship

*PMP Plus Ltd v The Keeper of the Registers of Scotland* 2009 SLT (Lands Tr) 2  
(Lands Tribunal for Scotland) Registration of Title; exclusion of indemnity; common parts

*Tonner v Reich & Hall* 2008 SC 1  
(Inner House) dismissal on grounds of delay; inherent power of the Court

*Tawne Overseas Holdings Ltd v The Firm of Newmilln Farm and others* [2008] CSOH 12; 2008 G.W.D. 6-116  
Commercial leases; irritancy; penalty clauses

*Burnett v Grampian Fire & Rescue* 2007 SLT 61  
Fire service; existence and scope duty to take reasonable care

*Foster v Keeper of the Registers of Scotland* 2006 SLT 513

Judicial review; land registration

*X v British Broadcasting Corporation* 2005 SLT 796

Human rights; emerging rights of privacy under The Human Rights Act 1998; interim orders

*Crocket v Tantallon Golf Club* 2005 SLT 663

Judicial review; unincorporated associations

### **Advocates Courts & Tribunals**

David has appeared before the following Courts and Tribunals: United Kingdom Supreme Court; Court of Session (Outer and Inner House); High Court of Judiciary; Sheriff Courts; Lands Tribunal for Scotland; Scottish Land Court; Upper Tribunal; courts of the Church of Scotland and various arbitrations and mediations.

### **Advocates Appointments & Memberships**

Standing Junior Counsel to Advocate General for Scotland: 2009 to date

Standing Junior Counsel to the Scottish Ministers: 2005 to 2009

Legal Member, Scottish Football Association Judicial Panel: 2014 to date

Scottish Editor, Mithani on Directors' Disqualification: 2014 to date

Joint Lead Tutor, Advanced Civil Law, The University of Glasgow: 2010 to 2013

Tutor, Civil Advocacy & Pleading, Glasgow Graduate School of Law: 2005 to 2009

Secretary, The Scottish Bench & Bar Golfing Society: 2006 to 2012

### **Directories**

David is recommended in the directories in respect of all of his principal areas of practice. The Legal 500 (2014), notes that he provides "expert advice" in relation to company and insolvency matters and, in respect of property litigation, he is recommended as "a natural litigator". In Chambers & Partners (2013), he is recommended for both Commercial Dispute Resolution and Restructuring/Insolvency and credited as having an "encyclopaedic" knowledge of the law and a "solid analytical mind". The Legal 500 (2012), meanwhile, recommends him for Company/Insolvency work and Property/Construction. In respect of insolvency and company matters, The Legal 500 recently described David as a "standout junior at the Scottish Bar" (2011) and also as possessing a "knowledge of corporate insolvency, possibly unparalleled at the junior Bar." (2010).

Chambers & Partners (2016): "Star at the Bar"

Chambers & Partners (2016): Company (Band 1)

Chambers & Partners (2016): Real Estate Litigation (Band 1)

Chambers & Partners (2016): Restructuring/Insolvency (Band 1)

Chambers & Partners (2016): Real Estate Litigation (Band 1)

Chambers & Partners (2016): Commercial Dispute Resolution (Band 2)

Chambers & Partners (2015): "Star at the Bar"

Chambers & Partners (2015): Company (Band 1)

Chambers & Partners (2015): Real Estate Litigation (Band 1)

Chambers & Partners (2015): Restructuring/Insolvency (Band 1)

Chambers & Partners (2015): Commercial Dispute Resolution (Band 3)

Chambers & Partners (2014): Commercial Dispute Resolution

Chambers & Partners (2014): Restructuring/Insolvency

Chambers & Partners (2013): Commercial Dispute Resolution

Chambers & Partners (2013): Restructuring/Insolvency

The Legal 500 (2015): Commercial Litigation

The Legal 500 (2015): Company and Insolvency

The Legal 500 (2015): Property, Construction and Agriculture

The Legal 500 (2014): Commercial Litigation

The Legal 500 (2014): Company and Insolvency

The Legal 500 (2014): Property, Construction and Agriculture

The Legal 500 (2013): Company and Insolvency

The Legal 500 (2012): Property/Construction

The Legal 500 (2012): Company and Insolvency

The Legal 500 (2011): Company and Insolvency

The Legal 500 (2010): Company and Insolvency

The Legal 500 (2009): Company and Insolvency

The Legal 500 (2008): Property, Construction and Agriculture

The Legal 500 (2007): Insolvency