

David Welsh

Year of Call: 2017

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Professional Career to date

Devil Masters: Euan Duthie QC, David Small, Frances Connor

2017 – present: Advocate, Axiom Advocates

2009 – present: Tutor, University of Edinburgh's School of Law

2017: Admitted to the Faculty of Advocates

2016 – 2017: Devil, Faculty of Advocates

2014: Admitted as a solicitor in England & Wales

2014 – 2016: Senior Solicitor (tax and trusts), Turcan Connell

2012 – 2014: Solicitor (tax and trusts), Turcan Connell

2012: Admitted as a solicitor in Scotland

2010 – 2012: Trainee Solicitor, Turcan Connell

Education & Professional Qualifications

Lord Reid Scholarship, Faculty of Advocates 2016 – 2017

Diploma in Legal Practice, University of Edinburgh 2009 – 2010

Reid Family Trust Prize (best overall result for LLB) 2009

Robert Ross Prize (property, trusts and succession) 2009

Andrew J Cunninghame Prize (contract, delict and family law) 2008

LLB Scots Law (with Distinction), University of Glasgow 2007 – 2009

MA (hons) Latin, University of Edinburgh 2002 – 2006

Areas of Expertise

- Company, Corporate Finance and Tax
- Commercial Contracts
- Public Law, Judicial Review and Human Rights
- Professional Liability
- International
- Insolvency
- Media Law

Professional Experience

David called to the Bar in 2017 as the Lord Reid Scholar 2016 – 17.

David is regularly instructed in a wide range of corporate and commercial matters. David has gained significant experience of contractual disputes and professional liability (solicitors, tax advisers/ accountants and surveyors) including disciplinary matters. David has also gained experience of the winding up of companies and disputes both during insolvency and between solvent parties, particularly in relation to property and clawback claims.

Prior to calling at the Bar, David was qualified as a solicitor in Scotland as well as in England & Wales. Having previously specialised in taxation and trusts as a solicitor, David has particular experience with taxation (particularly personal taxation) and disputes involving trustees, executors and charity trustees. David has provided advice on a wide range of contentious and non-contentious matters relating to private individuals, trusts, businesses and charities. He has experience of advising trustees and executors where the trust/ estate has cross-border or international elements, requiring consideration of private international law and double taxation treaties.

Since calling to the Bar, David has appeared in a number of public law cases, including a number of high-profile cases, and has developed a busy judicial review practice. He appeared as junior counsel before a full bench of the Court of Justice of the European Union in *Wightman v Secretary of State for Exiting the European Union* ([2019] Q.B. 199) and as junior counsel before a full bench of the United Kingdom Supreme Court in *Cherry v Advocate General for Scotland* [2019] UKSC 41. He acted as junior counsel at all stages of both *Wightman* and *Cherry*. He has brought a challenge in relation to the failure by a local authority to grant a mandatory exemption from rates for charities and was part of a challenge to guidance published by Food Standards Scotland and the Scottish Food Enforcement Liaison -Committee which was subsequently amended.

Recent Cases

Corporate, Commercial and Taxation

- *Liquidator of Premier Housewares (Scotland) LLP v Naeem Rashid* [2018] CSOH 23, 2018 SLT 386 - Acted successfully for a former member of an LLP in a note by its liquidator, seeking to claw back distributions under section 214A of the Insolvency Act 1986.
- *Promontoria (Henrico) Limited v Friel* [2019] CSOH 2; [2020] CSIH 1 - enforcement of a personal guarantee by assignee of bank loan book, including reclaiming motion in relation to requirements of proving the tenor, certification of documents and construction of an assignation.
- *Centric Community Projects Ltd v Aberdeen City Council* 2019 SLT 1318 - A decision by a local authority to refuse an application by a charity for charitable rates relief in relation to the property it rented reduced where the focus had been on the extent to which the property had been in active use but had failed to take account of the fact that the extent of use was attributable to the applicant's charitable activities and purposes in advertising and making available the property for use by other charities and community interest groups.
- *HMRC v DCM (Optical Holdings)* 2019 SLT 1369 - Discussion relating to divergence in procedure between Upper Tribunal and Court of Session when determining applications for leave to appeal.
- *Promontoria (Chestnut) Limited v Ballantyne Property Services* [2019] CSOH 91 - Commercial court debate in relation to a plea of *lis alibi pendens* where there is a commercial action for payment in dependence at the same time as a summary application for the calling up of standard securities.
- *McMahon v Grant Thornton* [2020] CSOH 50 - Defending accountancy firm accused of professional negligence for failing to provide advice about entrepreneurs' relief from CGT.
- *AB v Transform Medical Group* [2020] PNLR 20 - Represented insurer of insolvent insured in a lead case to determine the extent to which the insurer could be liable under the Third Party (Rights Against Insurers) Act 1930, having entered into an agreement with the insured prior to its administration.
- Provided advice in relation to LBTT penalties legislation to a national chain of restaurants.
- Provided advice in relation to the LBTT treatment of a proposed transaction where the transaction was being effected by a judicial factor on behalf of a partnership.
- Provided advice in relation to the appropriate Capital Gains Tax treatment of a proposed transaction between a number of parties.

Private Client and Trusts

- Acted for a residuary beneficiary of an estate in an action against the executor of the estate and the former attorney of the deceased in relation to breaches of fiduciary duties resulting in a loss to the estate.
- Acted for the executors of the estate of a deceased former Lloyd's name in a petition to the Inner House for permission to be able to wind up the estate.
- *Halvorson v Persimmon Homes* [2018] SC EDIN 40 - Acted for a homeowner in a dispute with a national housebuilder about concurrent delictual liability and unfair contract terms.
- Interdicted proposed executors from applying for confirmation for an estate until it had been determined which of a number of testamentary documents was the true will of the deceased.

Judicial Review and Public Law

- *Andrew Wightman MSP (and others) v The Advocate General* [2018] CSIH 18, 2018 SLT 356, [2018] CSIH 62 and [2018] 3 WLR 1965 - Junior Counsel for the petitioners, seeking clarification on whether the Article 50 Brexit Notification could unilaterally be revoked by the UK prior to "Exit Day", including a hearing before a full bench of the Court of Justice of the European Union.
- *Cherry and others v The Advocate General* 2019 SLT 1097; [2019] UKSC 41 - Junior Counsel for the petitioners, seeking a declarator that the Prime Minister's attempt to prorogue Parliament was unlawful and therefore void and of no effect, including a hearing before a full bench of the United Kingdom Supreme Court.
- *Vince and others v The Advocate General* 2019 SLT 1306; 2019 SLT 1201- Junior Counsel for the petitioners, seeking orders compelling the Prime Minister to send the letter to the President of the European Council required by the European Union (Withdrawal) No 2) Act 2019 and orders preventing him from seeking to frustrate the purposes of that Act. Also seeking, by way of application to the *nobile officium*, an order substituting another individual to send the letter in the event that the Prime Minister refused to do so.
- *Beggs v SLAB and Information Commissioner* 2020 CSOH 71 - counsel for the second respondent, resisting a petition for judicial review of a decision not to grant legal aid to a party seeking to appeal a decision of the Inner House to the UK Supreme Court. The case involved discussion of domestic grounds of judicial review as well as access to courts on the basis of fundamental commonlaw rights and Convention rights.

Advocates Courts & Tribunals

United Kingdom Supreme Court

Court of Session (Inner and Outer House)

Court of Justice of the European Union

Sheriff Appeal Court

Sheriff Court

Scottish Tribunals

Advocates Appointments & Memberships

2012 – present: Society of Trust and Estate Practitioners

2010 – present: Personal Finance Society

2014 – 2016: Law Society of England & Wales

2012 – 2016: Law Society of Scotland

Publications

- *Reeves v HMRC: hold-over relief, literal interpretation and human rights* BTR 2019 1 7-15
- *Reeves v HMRC: Is denial of hold-over relief a breach of human rights or EU law?* 2017 BTR 3 285-290
- *The Scotland Bill and Scottish Income Tax* 2015 JLSS 2015 60(7) 16-17

- The EU Succession Regulation 2015 SPCLR 53 4 – 5
- Revenue Scotland and Tax Powers Bill 2014 SPCLR 46
- R (Davies) v HMRC: How far can the taxpayer rely on HMRC guidance? 2011 BTR 6 643-652
- Tuczka v HMRC: The end for ordinary residence? 2010 BTR 3 223-233

Directories

The Legal 500 2020 ranks David as follows:

- Tier 1 leading junior for civil liberties, human rights, public enquiries and public and administrative law, describing him as "*intellectually impressive and unflappable in court*".
- Tier 1 leading junior for tax, trusts and pensions, describing him as "*combining a formidable intellect with an ability to get the job done and done well*".

Chambers and Partners 2021 says of David:

Commercial Dispute Resolution

Up-and-coming advocate with an impressive client following. He is frequently instructed in a variety of commercial matters, including contractual disputes and professional liability claims.

Strengths: "He has been quick, efficient and friendly." "He is an extremely talented advocate whose analytical skills are well beyond his years."

Administrative and Public Law

Sought after by prominent solicitors to handle complex, high-profile challenges at an impressively early stage in his career. He acts for petitioners and respondents in judicial reviews involving questions of constitutional and commercial law, or the regulation of the professions.

Strengths: "He's bright, personable and reliable." "He gets involved in the detail of matters."

Advocates Additional Information

David is a full member of the Society of Trust and Estate Practitioners.

David has been a tutor on the undergraduate Revenue Law course at the University of Edinburgh's School of Law since 2009 and is asked regularly to present at professional seminars and conferences, particularly in relation to taxation, trusts and succession matters.