

Jonathan Broome

Year of Call: 2012

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Professional Career to date

Devil Masters: Sean Smith QC, Sheriff Chris Shead, Astrid Smart and Ronaldo Renucci.

2012: Called to the Bar

2004-2011: Partner, Maclay Murray & Spens, Solicitors

2000-2004: Associate, Maclay Murray & Spens, Solicitors (including 2001-2002: Foreign Lawyer at Foley Hoag, Attorneys, Boston, Massachusetts)

1999-2000: Associate, Bird Semples, Solicitors

1997-1999: Solicitor, Bird Semples, Solicitors

1996-1997: Solicitor, McClure Naismith Anderson & Gardiner, Solicitors

1994-1996: Trainee Solicitor, McClure Naismith Anderson & Gardiner, Solicitors

Education & Professional Qualifications

DipLP, University of Edinburgh (1994)

LLB (Hons), University of Edinburgh (1993)

Areas of Expertise

- Alternative Dispute Resolution
- Construction and Engineering
- Commercial Contracts
- Insolvency
- Commercial Property
- Professional Liability

Professional Experience

Jonathan's principal areas of practice are in construction, professional negligence and commercial disputes. Before calling to the Bar, Jonathan was a partner in a leading firm of commercial solicitors. He was involved principally in complex commercial contract and negligence disputes, often of high value and involving multiple parties. His work included professional negligence, property and insolvency issues. He gained experience of disputes in the PFI and PPP sphere, which often involved public sector parties. He has a strong interest and practice in alternative dispute resolution and has acted as legal adviser to adjudicators and arbitrators, including advising on the scope for judicial review of decision makers' decisions.

Jonathan is ranked by Chambers UK in Construction and in Professional Negligence and is ranked by Legal 500 in Commercial Litigation. He has LLP board experience and was ranked as a Band 1 solicitor in Construction by Chambers UK. He is a director of the Scottish Arbitration Centre, a past Chairman of the Scottish Branch of the Chartered Institute of Arbitrators and was lead drafter of the Scottish Arbitration Code 2007.

Recent Cases

Martifer UK v Lend Lease Construction (EMEA) [2016] CSOH 98; [2016] CSOH 66; [2015] CSOH 81
Multiple aspect dispute between the main contractor and a sub-contractor in relation to the construction of the steelwork for The Hydro Arena, Glasgow. Concerned issues of contract construction and programming, among other matters.

Stewart Milne Westhill v Halliday Fraser Munro [2016] CSOH 76
Action for damages said to have been incurred due to architect's professional negligence. Involved a significant time bar defence, where the allegedly negligent design had been in place, and purported remedial works had been carried out, more than 5 years before the action was raised.

Forrest v Fleming Builders [2014] CSOH 158; [2015] CSOH 90
Claim for damages said to have been incurred due to diminution in value of the property constructed due to breaches of contract by the builder and architect. Considered interaction of liquidated damages provision with alleged end to contractual relations with the builder. Also considered time bar of a claim for distress and inconvenience and the circumstances in which a claim made in the commercial cause should be dismissed.

Aviva Investors Pensions v McDonald's Restaurants [2014] CSOH 009A
Action for declarator of unreasonable withholding of consent by a tenant to the construction of a new free standing retail unit in a retail park car park.

Royal Bank of Scotland v Halcrow Waterman [2013] CSOH 173
Time bar of an obligation to make reparation re deflection of concrete slabs in an office building, where cracking existed more than 5 years before the action was raised. Considered what awareness the exercise of reasonable diligence would have given rise to, in terms of the relevant statutory provision. Also considered the contractual construction of a net contribution clause.

Arbitration Application No.2 of 2013
Resisting legal error and serious irregularity appeals brought under the Scottish Arbitration Rules. Appeals based on alleged error in law, and on alleged unfairness, in the arbitrator's award of expenses.

J&A Construction (Scotland) v Windex [2013] CSOH 170
Resistance of enforcement of an adjudicator's award on the ground of the payee's balance sheet insolvency. Considered the court's equitable power to allow balancing of accounts in bankruptcy notwithstanding an adjudicator's award.

Whyte and Mackay v Blyth & Blyth Consulting Engineers [2013] CSOH 54; 2013 SLT 555
Applicability to adjudication of Article 6 of, and of Article 1 of Protocol 1 (A1P1) to, the European Convention of Human Rights. Also considered severability of adjudicators' decisions.

Martin & Co (UK), Petitioners [2013] CSOH 25
Competence of, and considerations to apply in making, an interim award of expenses in a specific monetary amount, subsequent to the granting of an earlier general award of expenses but prior to taxation of that general award; to allow diligence to be done in execution pending taxation of the prior general award.

Manchester Associated Mills v Mitchells & Butler Retail [2013] CSOH 2; [2013] 4 EG 107 (CS)
Legal error and serious irregularity appeals under the Arbitration (Scotland) Act 2010. Rent review arbitration relating to rent with a turnover based element. Rent review of maximum and minimum rental levels. Considered relationship between turnover rent, maximum and minimum levels and rent review provisions.

Scottish Ministers v Stirton[2012] CSOH 166

Acted for the Scottish Legal Aid Board in three day expenses hearing in these proceedings for a recovery order under the Proceeds of Crime Act 2002. Resisted on policy and legal grounds the granting of an additional fee to respondent's solicitors.

Pihl UK Ltd v Ramboll UK Ltd [2012] CSOH 139

Enforcement of an adjudicator's decision in the face of challenges based on breach of natural justice and unintelligibility/inadequacy of reasons. Also considered the appropriateness of granting summary decree (judgment) in enforcing adjudicators' decisions.

Cases Jonathan was responsible for as a solicitor include the following reported cases:

*R&D Construction v Hallam*2011 SC 286

Inner House case dealing with whether an obligation in missives to use all reasonable endeavours was enforceable or was only an agreement to agree and so unenforceable.

*CSC Braehead Leisure v Laing O'Rourke Scotland*2009 SLT 454; [2009] BLR 49

Enforcement of an adjudicator's decision resisted on numerous grounds, including lack of power to issue an interim decision, lack of severability, failure to issue decision on time and inadequacy and unintelligibility of reasons.

*CSC Braehead Leisure v Laing O'Rourke Scotland*2008 SLT 697

Considered the tension between providing a swift and efficient resolution of commercial actions and the interests of defenders in convening third parties.

*Spiersbridge Property Developments v Muir Construction*2008 SCLR 362

Concerned a performance bond. Dealt with the issue of whether the party who called on the bond is obliged, in respect of any excess of monies paid out, to account to the bank who paid out or to the party who had procured the bond.

*Melville Dundas v George Wimpey*2007 SC (HL) 116; [2007] 1WLR 1136

Acted for the receivers of Melville Dundas. Dealt with interaction of standard form building contract terms on insolvency, termination and payment with statutory provisions which prohibited the withholding of due sums in certain circumstances.

*Gillespie v Toondale*2006 SC 304

Inner House case regarding inhibition on the dependence and the test to be applied in determining whether there exists a sufficient prima facie case to justify the retention of the inhibition.

*Strathmore Building Services v Greig*2000 SLT 815; (2001) 17 Const LJ 72

Dealt with whether, in light of construction contract legislation, a notice of intention to withhold payment issued before any payment became due, could be effective to allow withholding of a payment which only became due later.

*Rogerson Roofing v Hall & Tawse Scotland*2000 SC 249

Arbitration stated case to the Inner House. Concerned whether an arbitrator was entitled to sustain a no title to sue plea on a ground not advanced in the arbitration pleadings and whether the claimants' pleadings were sufficient for an evidential hearing to be allowed.

Advocates Courts & Tribunals

As counsel: Court of Session, Sheriff Courts, arbitration, adjudication and mediation

As a solicitor: House of Lords, Court of Session, Sheriff Courts, arbitration, adjudication, expert determination and mediation

Advocates Appointments & Memberships

2015-to date: Director, Scottish Arbitration Centre

2013-2015: Chairman CI Arb (Scottish Branch)

2011-2012: Vice Chairman CI Arb (Scottish Branch)

1999-to date: Committee Member CI Arb (Scottish Branch)

Directories

Ranked in Construction, and in Professional Negligence, by Chambers UK. Ranked in Commercial Litigation by Legal 500. Specific comments are:

"He is very experienced and good with clients." "He provides very sound advice." "He's detailed, thorough, helpful and exceptionally busy - a sign of someone who's well regarded." (Chambers UK 2016)

"He is able to get up to speed with a large volume of information very quickly." (Legal 500 2016)

"He's incredibly bright and enthusiastic. He's good on tactics, and his specialist area is construction and he knows it inside out." (Chambers UK 2015)

"Excellent legal analysis and strategic advice" (Legal 500 2014)

As a solicitor, Jonathan was rated/recommended for many years in Chambers UK and Legal 500. In the years immediately prior to joining the Bar, Jonathan was ranked as a Band 1 solicitor in Construction by Chambers UK. Specific comments are:

"User friendly ... first class legal mind" (Legal 500 2012)

"[His] advice is invaluable in forming my decision" (Chambers UK 2012)

"A key player who knows his stuff inside out" (Chambers UK 2011)

"He's one of the most intelligent lawyers I've come across ?He's got an edge when it comes to insolvency" (Chambers UK 2008)

"Commercial, pragmatic approach to matters and produces work of a high quality" (Chambers UK 2006)

Advocates Additional Information

Extensive experience, as counsel and as a solicitor, of appearing in arbitrations, adjudications and mediations.