

## Jonathan Brown

**Year of Call:** 2000

jonathan.brown@axiomadvocates.com  
07740 066321



### Professional Career to date

Devilmasters David Stephenson QC and Gary Allan QC

2000: Called to the Bar

Employment as solicitor

1997-99: Assistant solicitor, McClure Naismith, Glasgow

Litigation solicitor with direct responsibility for managing a varied caseload, with the emphasis on commercial litigation

1995-97: Trainee solicitor, Hughes Dowdall, Glasgow.

Broad based traineeship with heavy emphasis on litigation. Numerous court appearances under restricted practising certificate. Extensive involvement in complex and high profile litigations including the Dunblane Inquiry.

### Education & Professional Qualifications

1992-95 Glasgow University - LLB (accelerated graduate entry degree); DipLP (with distinction).  
Awarded the Cunningham Prize in Scots Law 1993.

1988-92 Strathclyde University - BA(Hons) in History and Politics (2:1); third year spent on exchange at Trinity College, Dublin

### Areas of Expertise

- Commercial Contracts
- Professional Liability
- Commercial Property
- Insolvency
- Product Liability

### Professional Experience

Jonathan practised for two years as a qualified solicitor, having experienced a predominantly litigation traineeship. Since calling to the bar he has practised predominantly in commercial litigation, property litigation, professional discipline, professional negligence and licensing.

### Recent Cases

## Commercial Litigation

*McGivney Construction Ltd v. Kaminski* [2015] CSOH 107

Commercial court; directors' duties; substantial action for account of profit derived from breach of fiduciary duty, including "springboard claim"

*Playfair Investments Ltd v. McElvogue* 2013 SLT 225

Commercial court; diligence on the dependence. Significant decision on the scope of inhibition following statutory reform.

*M v. Bank of Scotland* [2012] CSIH 84

Inner House; Banking law. Dispute about proper characterisation of "offset" linked mortgage and current account.

*Whyte & Mackay Ltd v. Capstone International Inc* 2011 SC 221

Inner House; international commercial contract dispute between Scottish distiller and its American distributor. Interpretation of contract and appropriateness of interim order under s47(2) of the Court of Session Act 1988.

*Longmuir v. Moffat* 2009 SC 329

Inner House; Stated case from arbitration concerning sections 20 and 21 of the Partnership Act 1890 and the scope of presumption that assets bought with partnership funds become partnership property.

*Bell & Scott LLP v. Kaye* [2009] CSOH 51 & 111

Commercial Court; solicitors' partnership dispute; construction of restrictive covenant in business transfer agreement.

*Credential Bath Street Ltd v. Venture Investment Placement Ltd* [2007] CSOH 208

Commercial Court. Large scale commercial dispute concerning proper construction of a parent company "step in" guarantee in a commercial lease and validity of notice given.

*Black v. McGregor* 2007 SC 69

Inner House; Construction of interest and liquidate damages provisions in missives for sale of property.

*Scottish Youth Theatre (Property) Limited v. Royal Scottish Academy of Music & Drama Endowment Trust Trustees* 2003 GWD 27-758

Inner House; Construction of good faith co-operation clause in joint venture contract.

## Property Litigation

*@SIPP(Pension Trustees) Ltd v Insight Travel Services Ltd* 2016 SLT 161.

Inner House. Important decision on proper construction of repairing obligations in commercial lease.

*Dem-master Demolition Ltd v. Healthcare Environmental Services Ltd* [2015] CSOH 154

Commercial Court; construction of repairing obligation in commercial lease; consequences of failure of parties to complete schedule of condition provided for in lease.

*Drimsynie Estate Limited and Ramsay* [2014] CSOH 93

Outer House; Summary Trial under chapter 77 of the Rules of the Court of Session on assumptions to be applied by arbitrator in fixing value at which holiday chalets to be re-purchased by landlord at expiry of ground lease.

*McGraddie v. McGraddie & Green* [2013] 1 WLR 2477; 2014 SC (UKSC) 12.

Supreme Court; Agency and constructive trust in acquisition of property; proper approach for appellate court to take to findings of court of first instance.

*Morris v. Rae* 2013 SC (UKSC) 16

Supreme Court; property law; proper scope of claim under warrandice.

*Trustees of the Elliot of Harwood Trust v Feakins* 2013 SLT (Sh Ct) 108

Sheriff Court; Complex and unusual application for rectification of the register. Important discussion of

concept of proprietor in possession in the context of occupation of small cottage on large rural estate.

*Co-operative Insurance Society v. Fife Council*[2011] CSOH 76  
Commercial Court. Dispute about whether repairing obligation imposed liability for extraordinary repairs.

*Douglas Shelf Seven Ltd v. Co-operative Wholesale Society Ltd(No. 2)* [2009] CSOH 3  
Commercial Court. Dispute as to whether previous award of damages for breach of a "keep open" clause in a commercial lease precluded the landlords from enforcing the repairing obligation and having the vacant premises put into a condition whereby they could immediately be traded from.

### **Professional Negligence/Professional Discipline**

*Heather Capital Ltd (in liquidation) v. Levy & McRae* [2016] CSOH 107 and [2015] CSOH 115  
Commercial Court; Solicitors' negligence. Substantial litigation on very high value claim. Important decisions on liability of incoming partner for breaches of predecessor partnership, and on application of short and long negative prescription.

*McSparran McCormick v. Scottish Legal Complaints Commission* 2016 SLT 510  
Inner House; Solicitors' discipline. Clarification of duty incumbent on solicitor when considering allegations of fraud, dishonesty or impropriety.

*Stewart & Mclsaac v. Scottish Legal Complaints Commission* 2014 SC 569  
Inner House; Solicitors' discipline. Further important clarification on time bar regime.

*Murnin v. Scottish Legal Complaints Commission* 2012 SLT 685  
Inner House; Solicitors' disciplinary proceedings. The first appeal to come before the court from a decision of the Scottish Legal Complaints Commission on whether a complaint had been made within the applicable time limit.

*Sandeman v. Council of the Law Society of Scotland* 2011 SC 596  
Inner House; Appeal from finding of misconduct by solicitors' discipline tribunal.

*Council of the Law Society of Scotland v. Scottish Legal Complaints Commission* 2011 SC 94  
Inner House; Solicitors' disciplinary proceedings. The first appeal to come before the court from a "sifting" decision made by the SLCC on the eligibility of a complaint.

*Bothwell v. DM Hall*[2009] CSOH 24  
Commercial Court; surveyors' negligence. Complex claim against surveyors relating to advice given as to prospects of obtaining planning permission for development of site, and loss caused by decision to cease trading in reliance on assessment of prospects of permission for redevelopment being granted.

*Campbell Riddell Breeze Paterson v. Council of the Law Society*[2007] CSIH 1  
Inner House; Solicitors' Disciplinary Proceedings; Appeal against finding of professional misconduct from the Scottish Solicitors' Discipline Tribunal.

*Burnett v. Menzies Dougal*WS 2006 SC 93  
Solicitors' Negligence; successful appeal to Inner House against Lord Ordinary's decision to dismiss action.

### **Licensing and regulatory**

*Wm Morrison Supermarkets plc, petitioner*[2010] CSOH 66  
Outer House; Licensing; The first challenge brought by way of judicial review to the so-called "duty to trade" said to arise by virtue of the mandatory licence condition imposed by para 2(1) of schedule 3 to the Licensing (Scotland) Act 2005.

*Them Properties LLP v. Glasgow City Council* 2010 SC 690  
Inner House; Licensing; Houses in Multiple Occupation.

*Deejays Nightclub, Petitioner*[2007] CSOH 188  
Outer House; judicial review of licensing decision to restrict regular extension of permitted hours.

*Calderwood v. Renfrewshire Council*2004 SC 691  
Inner House; Licensing; Legitimacy of application of policy by licensing board.

*Hughes v. HMA*2002 SCCR 937  
Medicines Act 1968; unlicensed sale in UK of veterinary medicine freely available over the counter in Republic of Ireland.

### **Human Rights and Public Law**

*Mitchell v. Glasgow City Council*2009 SC(HL) 24; [2009] 1 AC 874; [2009] 2 WLR 481  
House of Lords; Negligence at Common law - whether social landlord owed a duty to protect one of its tenants from assault at the hands of another tenant; Article 2 ECHR - duty to give warning. Instructed, without senior counsel, for interveners.

*Smith v. Mental Health Tribunal for Scotland*2006 SLT 347  
Outer House; Judicial Review of administrative decision re failure to fix a tribunal hearing within a mandatory time limit. Instructed for the successful petitioner (in substance the employing local authority).

*McAllister v. Secretary of State for Work & Pensions*2003 SLT 1195  
Inner House; Statutory Appeal; Proper approach to be taken by superior court where appeal conceded by respondent.

### **Advocates Courts & Tribunals**

Supreme Court, House of Lords, Court of Session Outer House and Inner House, High Court of Justiciary both at first instance and on appeal, Sheriffs Principal, Sheriff Court at first instance. A wide range of other statutory and disciplinary tribunals, including the Lands Tribunal, the Scottish Solicitors' Discipline Tribunal, the Institute of Chartered Accountants of Scotland Disciplinary Tribunal, the disciplinary committee of the Royal Pharmaceutical Society, the Traffic Commissioners, Licensing Boards, and Police disciplinary hearings.

### **Directories**

Jonathan is recommended by Chambers & Partners for both commercial dispute resolution and professional discipline, and by the Legal 500 for both commercial dispute resolution and professional negligence. He is described as *thorough, sharp and tough* (Legal 500 2013) as having an *excellent grasp of detail*(Legal 500 2014), as having a *superb understanding of the law* (Chambers & Partners 2013) and as being *held in high regard for his work in solicitors disciplinary cases* (Chambers & Partners 2015).