



DAVID H. McLEAN

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Academic Qualifications

LL.B (Hons), University of Edinburgh.
LL.M (with Distinction) in Commercial Law, University of Edinburgh.
Dip LP, University of Edinburgh.

Year of Call

2012

Additional Information

1. Solicitor (qualified 2002).
2. Solicitor Advocate (2009).
3. TB Smith Prize for Distinguished Scholarship (LL.M), University of Edinburgh.
4. Faculty Scholar, 2011-2012.
5. Part-time Tutor, University of Edinburgh, LL.B (Contract and Unjustified Enrichment).
6. Part-time Tutor, University of Edinburgh, LL.B (Commercial Law Honours – Insurance).
7. Part-time Tutor, University of Edinburgh, LL.M (Principles of Insurance Law).
8. Senior Tutor, University of Edinburgh, Diploma in Legal Practice (Civil Court Practice).
9. Senior Tutor, University of Edinburgh, Diploma in Legal Practice (Civil Court Practice), 2017-present.

Areas of Practice

Commercial
Insurance
Judicial Review
Landlord and Tenant
Professional Negligence

Professional Experience

David called to the Bar in 2012. Prior to that he had been a solicitor in private practice for a number of years, and qualified as a solicitor advocate in 2009. David has dealt with a wide variety of cases since calling at the Bar. He is regularly instructed to provide opinions on a wide variety of matters and has appeared in the Sheriff Court, the Sheriff Appeal Court, the Outer House, and the Inner House. Some of the cases in which David has appeared are listed below in the Appendix.

The majority of David's work is in the areas of contract and property law. Insofar as contract is concerned, he has conducted cases on matters such as the interpretation of contracts, the incorporation and implication of terms into contracts, and the enforceability of penalty clauses. On the property side, he has conducted cases dealing with various matters relating to leases, cases involving the constitution and interpretation of servitude rights, and cases involving common property. He also regularly acts in cases involving other aspects of private law, including, for example, professional negligence cases.

In addition to his private law work, David also has extensive experience of judicial review and regulatory work. Insofar as judicial review is concerned, he has particular experience of cases relating to prisoners. On the regulatory side, he has successfully represented registrants before professional tribunals and before the Inner House of the Court of Session. As well as advising and representing registrants, David is a legal assessor for the Nursing and Midwifery Council, a panel member of the Cricket Scotland Disciplinary Committee, and a panel member of the Scottish Gymnastics Association Conduct Committee, which has given him experience of hearing disciplinary cases and appeals, including acting as chairman.

In addition to his work as an advocate, David tutors at the University of Edinburgh. He tutors undergraduates on the LL.B Ordinary programme (Contract and Unjustified Enrichment) and on the Honours programme (Commercial Law – Insurance), and postgraduates on the LL.M (Principles of Insurance Law), and the Diploma in Professional Legal Practice (Civil Court Practice). He is the Senior Tutor on the Civil Court Practice Course. In addition to that, having played cricket competitively for a number of years, he now umpires in one of the top leagues in Scotland. He officiated as an on-field and third umpire in a number of matches in the ICC World Cricket League, Europe Division 2, in Sweden in 2016. He has also officiated a number of domestic finals, including the 2018 Scottish Cup Final.

Appendix

1. *McGleish v. Tough & Anor* [2018] SAC (Civ) 19 (Sheriff Appeal Court, 31 July 2018) Insolvency; non-vested contingent interests; discharge from sequestration.
2. *Khosrowpour v. Taylor* [2018] CSOH 64 (Court of Session, Outer House, 15 June 2018) Contract; breach; damages; competency; partnerships; prescription.
3. *Cleghorn v. Duncan* 2017 SLT 1189, [2017] CSOH 114 (Court of Session, Outer House, 31 August 2017) Civil Recovery Proceedings; Confiscation Orders.
4. *Kirkwood Homes Ltd v. Rushmer & Anor*, unreported, (Aberdeen Sheriff Court, 24 April 2017) Contract; breach; defences; retention.

5. *Peebles v. Rembrand Builders Merchants Ltd* 2017 GWD 15-236 (Dundee Sheriff Court, 18 April 2017) Breach of contract; fitness for purpose; sale of goods; satisfactory quality.
6. *AG v. Scottish Ministers* [2017] CSOH 10 (Court of Session, Outer House, 24 January 2017) Administrative Law; Judicial review; Scottish Ministers; Failure to provide reasonable opportunity for prisoners' rehabilitation.
7. *Jackson & Anor v. Goldie & Ors*, unreported (Kilmarnock Sheriff Court, 8 December 2016) Property; Registration of title; ownership; common property.
8. *Louise Witter, Petitioner* 2017 SC (SAC) 21, [2016] SAC (Civ) 8 (Sheriff Appeal Court, 9 September 2016) Company Law; Derivative proceedings; Leave to bring proceedings; Expenses.
9. *John Mackie v. The Scottish Ministers; Kenneth Fraser v. The Scottish Ministers* [2016] CSOH 125, 2016 GWD 29-526 (Court of Session, Outer House, 23 August 2016). Administrative Law; Judicial review; Scottish Ministers; Failure to provide reasonable opportunity for prisoners' rehabilitation.
10. *Khosrowpour v. Mackay's Executor* [2016] CSIH 50, 2016 GWD 21-366 (Court of Session, Inner House (Extra Division), 1 July 2016). Civil Procedure; Pleadings; Relevancy and Specification; Homologation.
11. *Fortune's Trustee v. Medwin Investments Ltd; Fortune's Trustee v. Cooper Watson Ltd* 2016 SC 824, 2016 SLT 923, [2016] CSIH 49, 2016 GWD 22-405 (Court of Session, Inner House (Second Division), 1 July 2016). Insolvency; Sequestration; Debtor granting standard security over, and disposing, heritable properties; Whether voidable.
12. *AG v. The Scottish Ministers*, unreported (Court of Session, Inner House (Extra Division), 18 May 2016). Administrative Law; Judicial review; Scottish Ministers; Failure to provide reasonable opportunity for prisoners' rehabilitation.
13. *Fortune's Trustee v. Cooper Watson Ltd* [2015] CSOH 140, 2015 GWD 34-553 (Court of Session, Outer House, 21 October 2015). Insolvency; Sequestration; Debtor disposing heritable properties; Whether dispositions voidable.
14. *Fortune's Trustee v. Medwin Investments Ltd* [2015] CSOH 139, 2015 GWD 34-552 (Court of Session, Outer House, 21 October 2015). Insolvency; Sequestration; Debtor granting standard security over, and disposing, heritable properties; Whether standard security and dispositions voidable.
15. *David Penman v. The Scottish Ministers* 2015 SLT 597, [2015] CSOH 106, 2015 GWD 26-448 (Court of Session, Outer House, 11 August 2015). Administrative Law; Judicial review; Prison authorities; Disciplinary hearings; Reduction.
16. *Wall & Anor v. Kerr & Anor*, unreported (Airdrie Sheriff Court, 30 July 2015). Heritable Property; Servitudes; Whether servitude created by implication; Whether servitude constituted by prescription.
17. *Gardner & Anor v. Kerr & Anor*, unreported (Airdrie Sheriff Court, 27 July 2015). Heritable Property; Servitudes; Proper construction of deed creating servitude.
18. *Glasgow Caledonian University v. Liu* [2015] CSIH 48, 2015 GWD 21-361 (Court of Session, Inner House (Extra Division), 2 June 2015). Civil Procedure; Pleadings; Relevancy and Specification; Breach of Contract.

19. *Trotter v. Health and Care Professions Council*, unreported (Court of Session, Inner House (Extra Division), 10 February 2015). Health; Radiographer; Decision of the Health and Care Professions Council; Reduction.
20. *Khosrowpour v. Mackay's Executor* [2014] CSOH 175, 2015 GWD 1-8 (Court of Session, Outer House, 16 December 2014). Contracts; Formation; Whether contract relating to heritage.
21. *Marshall v. Glasgow City Council & Anor*, unreported (Glasgow Sheriff Court, 15 December 2014). Negligence; Local authority; System of inspection.
22. *Duff v. Lamb & Anor*, unreported, (Court of Session, Inner House (Extra Division), 11 June 2014). Civil Procedure; Expenses; Caution for expenses; Whether Sheriff had erred in the exercise of his discretion.
23. *Rezac's Executors v. Rezac's Executrix Nominat* 2014 GWD 15-281 (Edinburgh Sheriff Court, 25 April 2014). Succession; Executors; Administration of estate; Power of sale.
24. *Agri Energy v. McCallion* [2014] CSOH 14 (Court of Session, Outer House, 28 January 2014). Contracts; Restrictive Covenant; Enforcement; Whether restrictive covenant reasonable.
25. *Agri Energy v. McCallion* [2014] CSOH 13, 2014 GWD 5-101 (Court of Session, Outer House, 28 January 2014). Contracts; Restrictive covenant; Recovery of sums for breach of undertakings; Whether penalty clause.
26. *Clydesdale Bank plc v. McVicar*, unreported (Perth Sheriff Court, 14 January 2013). Civil Procedure; Pleadings; Relevancy and Specification; Recovery of possession of heritable property.
27. *Wyman Gordon Ltd v. Proclad International Ltd* 2011 SC 338, [2010] CSIH 99, 2011 GWD 2-84 (Court of Session, Inner House (Second Division), 21 December 2010). Contracts; Repudiation and rescission; Relevancy.
28. *Durkin v. DSG Retail Ltd & Anor* 2010 SC 662, 2011 SLT 114, 2010 SCLR 692, [2010] CTLR 252, [2010] CSIH 49, 2010 GWD 28-574 (Court of Session, Inner House (First Division), 15 June 2010). Contracts; Breach of Contract; Consumer entitled to rescind sale agreement; Whether thereby entitled to rescind consumer credit agreement.
29. *Geoffrey (Tailor) Highland Crafts Ltd v. GL Attractions Ltd* 2010 GWD 8 – 142 (Edinburgh Sheriff Court, 6 January 2010). Landlord and tenant; Lease; Construction; Landlord's right of access to office on retail subjects; Whether use of office restricted to administrative purposes.
30. *Euro Hire Drive v. John Trotter*, unreported (Peebles Sheriff Court, 7 June 2007). Contracts; Insurance; Construction; Whether hirer covered by insurance provision in contract.
31. *Thomson & Anor v. Anglian Windows Ltd*, unreported (Linlithgow Sheriff Court, 2 April 2007). Civil Procedure; Relevance and specification; Contracts; Implied terms; Whether supplier in breach of implied terms of contract.
32. *Peatallan plc v. Wordie Properties Ltd*, unreported (Glasgow Sheriff Court, 5 December 2006). Contracts; Construction.
33. *WF Price (Roofing) Ltd v. Balfour Beatty Ltd* 2006 SLT (Sh Ct) 146, 2006 GWD 25-553 (Edinburgh Sheriff Court (Sheriff Principal), 4 August 2006). Civil Procedure; Pleadings; Relevance and specification; Insurance; Storm damage.