



# Hastie Stable

## Faculty of Advocates

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#### Information

Admitted to Scottish Bar	13 July 1984
Queens Counsel	Summer 1998
Admitted to English Bar	22 November 2000

Main Reported cases since taking silk

HCA High Court of Justiciary Appeal Court (appellate criminal jurisdiction exercised by three judges unless otherwise stated)

IH Inner House of the Court of Session (three judges exercising civil jurisdiction);

JO Justiciary Oases (Criminal section of SC)

OH Outer House of the Court of Session (single judge exercising civil jurisdiction);

SC Session Cases (where JO are also found)

50CR Scottish Criminal Case Reports

SLT Scots Law Times

SSHD Secretary of State for the Home Department

## Significant Cases

Case Name	Reported	Court	Comment
Secretary of State for Social Security v <i>M</i>	1999 SC 235 1999 SLT 1046;	<b>IH</b>	Appeal from pension appeal tribunal on link between AIDS and military service
Mitre Pensions v Pensions Ombudsman	[2000]OPLR 349	<b>IH</b>	Case on mal administration of Occupational pension
<i>Starrs v Ruxton</i>	2000 JC 208; 2000 SLY 42; 1999 50CR 1052; [2000] HRLR 191; [2000] UKHRR 78; 8 BHRC 1	<b>HCA</b>	Article 6 challenge to independence and impartiality of temporary sheriffs
<i>Clancy v Caird</i>	2000 SC 441; 2000 SLY 546; 2000 SCLR 526; [2000] HRLR 557; [2000] UKHRR 509	<b>IH</b>	ECHR challenge to independence/impartiality of temporary court of Session judges
<i>Ruxton v Borland</i>	2000 JC 475; 2000 SLT 612; 2000 SCCR 484	<b>HCA</b>	5 Judges case on point at which trial starts
<i>Buchanan v McLean</i>	2000 SLT 928; 2000 SCCR 682; [2000] UKHRR 598	<b>HCA</b>	Article 6 challenge to fixed fees scheme for summary criminal cases
<i>Buchanan v McLean</i>	2002 SC(PC) 1; 2001 SLT	PC	High Court upheld

	780; 2001 SCCR 475; [2001] 1 WLR 2425; [2001] HRLR 51; [2001] UKHRR 793; (2001) 98(28) LSG 44; (2001) 145 SJLB 158;		
<i>Millar v Dickson</i>	2000 SLT 1111	HCA	Validity of convictions by temporary sheriffs pre Starrs
<i>Millar v Dickson</i>	2002 SC(PC) 30; 2001 SLT 988; 2001 SCCR 741; [2001] HRLR 59; [2001] UKHRR 999	PC	High Court overturned on waiver
<i>Robertson v Fife Council</i>	2001 SLT 708; 2000 SC 849	IH	Validity of anti-avoidance provisions on nursing care finance OH upheld
<i>Robertson v Fife Council</i>	2002 SC (HL) 145; 2002 SLT 951; (2002)5 CCL Rep 543; 2002 Hous LR 78; (2002) 68 BMLR 229	HL	1st instance and Inner House overturned on appeal
<i>Keenan v Aberdeen Slating</i>	2000 SLT 1259	IH	Contractual dispute
<i>BBC Scotland v Souster</i>	2001 SC 458; 2001 SLT 265; 2001 IRLR 150	IH	Anti-English discrimination covered by Race Relations Act

TV A & Dundee Council	2001 SCLR 647	Sh Princ	ECHR access to Court case on Children' s Hearings
Docherty v <i>City of Edinburgh Council</i>	2001 SLT 291	IH	Legitimate expectation licensing case
<i>Kacaj v SSHD</i>	[2001] INLR 354	IAT	Interaction of ECHR and refugee convention
<i>Kacaj v SSHD</i>		CA	IAT overturned on merits
<i>Wales &amp; anor v HMA</i>	2001 SCCR 633	HCA	Circumstances in which Crown can cite defence experts
HM Advocate v <i>R</i>	2001 SLT 1336	HC	Remedy for delay
HM Advocate v <i>R</i>	2002 SLT 834; 2002 SCCR 697	HCA	instance upheld on appeal
HM Advocate v <i>R</i>	[2004] 1 AC 462 [2003] 2 WLR 317; 2003 SC (PC) 12; 2003 SLT 4; 2003 SCCR; [2003] UKHRR I	PC	<i>Ultra vires</i> of prosecutor for prosecution to continue after reasonable time [bench of 9 Judges assembled in HL to consider consequences of this case for England]
<i>Stewart v Perth &amp; Kinross Council</i>	2003 SC 551; 2003 SLT; [2003] SLLP 12	IH	Licensing condition <i>ultra vires</i>
<i>Stewart v Perth &amp; Kinross Council</i>	2004 Sc (HL) 71; 2004 SLT 383;	HL	Appeal unsuccessful
<i>Reid v Napier</i>	2002 SLT 1229	HCA	Article 8 case on probation condition
<i>McDonald v PF Elgin</i>	2003 SLT 467; 2003 50CR 311	HCA	ECHR: whether 22 hour curfew amounted to detention

<i>Charanjitsfng v SSHD</i>	2004 SC 416	IH	pre 1997 part time adjudicator not independent and impartial at common law 1st instance upheld on appeal
<i>Riach v Scottish Ministers</i>	2002 SLT 1296	IH	ECHR JR on education and discrimination (St Mary' 5 EP School, Dunblane)
<i>Cannell v Scottish Ministers</i>	2003 SLY 554	IH	ECHR JR on wasted costs in planning context instance upheld on appeal
<i>Queen ota SSHD &amp; Hwez (for interested parties)</i>	[2002] 1mm AR 491; [2002] INLR 116	CA	Right to determination of asylum status where removal impossible
<i>Wright v Scottish Ministers</i>	2005 1 SC 453; 2005 SLY 613; 2006 SCLR 14	IH	challenge to proportionality of extradition where Scottish courts have concurrent jurisdiction
<i>Flynn others v HM Advocate</i>	2003 JC 153 2003 SLY 954;	HCA	ECHR challenge to transitional arrangements for
	2003 50CR 456		life prisoners in judicialising parole
<i>flynn &amp; others v HM Advocate</i>	2004 SC (PC) 1; 2004 SLT 863; 2004 SCCR 281	PC	Article 7 held to apply by majority; legitimate expectation also in play
<i>Flynn &amp; others v HM Advocate</i>	2005 1 JO 271; 2004 SLT 1195; 2004 SCCR 702	HCA 5 judges	Periods to be served reduced in light of PC decision
<i>DuPlooy &amp; others v HM Advocate</i>	2003 SLT 1237; 2003 60CR 640	HCA	Case setting guidance for discount for pleading guilty
<i>Malik v SSHD</i>	2003 SC 509; 2003 SCLR 422	IH	Significance of outstanding warrants in asylum context

<i>Saber v SSHD</i>	2003 SLT 1409 [2004] INLR 222	IH	Correct approach for AT to take to adjudicator' s findings on evidence; meaning of country" in asylum
<i>Higson v Doherty</i>	2004 SCCR 63	HCA	Appeal under Backing of Warrants (Republic of Ireland) Act 1965
<i>Doherty petitioner</i>	2004 SCOR 63	HCA	Petition to <i>nobile officium</i> setting aside part of outcome of earlier Appeal
<i>Tehrani v SSHD</i>	2004 SLT 461	IH	Whether Court of Session can review English immigration adjudicator
<i>Armstrong v Dunlop' s Judicial Factor</i>	2004 SLT 295	IH	<i>Interim</i> interdict against sale of home by Judicial Factor
<i>Moir v HM Advocate</i>	2004 SCOR 658	HO	challenge to" rape shield" legislation (s 275 1975 Act)
<i>Moir v HM Advocate</i>	2005 1 JO 102	HOA	Appeal from M(M): challenge to" rape shield" legislation
<i>HMA v Headrick</i>	2005 SOOR 787	Sh Ct	Devolution issues incompetent in extradition; but accused discharged by reason of passage of time
<i>Koca v SSHD</i>	2005 1 SC 487; 2005 SLT 838; 2006 SOLR 427; {2005J INLR 506	OH IH	Adequacy of reasons in asylum claim by Turkish Kurd; requirements of fair hearing where Home Office not represented
<i>D v SSHD</i>	2005 1 SC 415	IH	Adequacy of reasons in asylum claim by Pakistani Christian; internal flight
<i>HMA v DS</i>	2006 JO 47; 2006 SLT 705; 2005 50CR 655	HOA	challenge to rape shield legislation where accused has relevant convictions

<i>CW(Deportation; Huang; Proportionality; Jamaica) [2005] UKIAT 110</i>	[2005] 1mm AR;[2006J INLR 10	AT	Deportation set aside by reason of failure to identify legitimate aim being pursued in restricting article 8
<i>Torabi v SSHD</i>	2006 SLT 459	IH	Adequacy of reasons where penalty of stoning at stake if returned to Iran
<i>Goatley v HMA</i>	2007 SLT 14;2006 50CR 463; [2007] Eu LR 42	HCA	Prosecutor was judicial authority” for purposes of issuing European Arrest Warrant
<i>La Torre v HMA</i>	2006 SLT 989; 2006 SCCR 503; [2007] Eu LR 70	HCA	Extradition not contrary to article 8 ECHR
<i>Calder v HMA</i>	2006 SCCR 609	HCA	US sentencing practices not a bar to extradition
<i>Calder v Frame</i>	2007 JC 4	HCA	Challenge to transmission of evidence to USA
<i>Tehrani v SSHD</i> [2006] UKHL 47	2007 SC(HL) 1; [2007) 1 AC 521	HL	Court of Session can review English immigration adjudicator
<i>HMA v DS</i>	2007 SC (PC) 1; 2007 SLT 1026; 2007 SCCR 222	JCPC	challenge to rape shield legislation
<i>Saber v SSHD</i>	[2007] UKHL 57; 2008 SC HL 132	HL	Appropriate remedy where appeal against IAT allowed
<i>MM v HMA</i>	[2007] HCJAC 20;	HCA	Appeal against conviction in rape shield case
<i>DJS v CICB</i> [2007] CSIH 49	2007 SC 748	IH	HR challenge to failure to backdate changes to CIC scheme
<i>D v Glasgow City Council</i> [2007] CSIH	2007 SC 748	IH	Education: out of area placement challenge

<i>Helow v SSHD</i>	[2008] UKHL 62; 2008 SLT 967		Impartiality of judge
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#### Other cases

<i>Shepherd v Scottish Ministers</i>	1 May 2001	OH	ECHR attempt to prevent foot & mouth slaughter
<i>Kenneth Richey</i>	Summer 2004	US Sixth Circuit Federal Court of Appeal	Drafted <i>amicus</i> brief on behalf of parliamentarians in death row case
<i>Duncan v Scottish Ministers</i>	20 July 2004	OH	Interim declaratory competent against the Crown

#### Other information

- Door tenant at Tooks Chambers, London since start 2001
- Consultant editor United Kingdom Human Rights Reports since 2000  
Legal Assessor to discipline committee of the General Teaching Council for Scotland from 2001 to 2005
- Chair of Faculty of Advocates Human Rights Committee 2005 to 2008;
- elected Keeper of the Library of the Faculty of Advocates April 2008;
- nominated trustee of the National Library of Scotland since July 2008;
- Member of the legal panel of the Mental Health Tribunal for Scotland since 2005.
- Chairman of triathlonscotland October 2004 to October 2006; Secretary for five years before that.
- In 2005 and 2006 I lectured on human rights as a Council of Europe expert in Kosovo (twice) Macedonia and Rostov-on-Don. The participants in the courses were variously judges, ombudsman staff and legal practitioners. In June 2007 I lectured lawyers in Yerevan, Armenia.
- Toured the world by train and boat July to October 2008.