

# ARBITRATION, PRACTICE AND PROCEDURE

## CASE DATA BASE SCOTLAND



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| TOPIC INDEX                             | CASE NAME <i>(Hyperlinked – word version only – not available in pdf)</i> - CITATION : <i>(On-line web source)</i> : <b>Bullet point summary.</b>  | JUDGE   | Year/M/D   | COURT                              |
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| <b>Application for interdict</b>        | <b>Hiskett v. G and G Wilson [2003] ScotCS 290</b><br>The third conclusion is for removing, and the fourth conclusion is for interdict against further proceedings in an arbitration between the pursuers and the firm of Messrs G & G Wilson under the Agricultural Holdings (Scotland) Act 1991. Applied. Wrong parties – lease to prior occupants – current occupiers not successors in title to the lease. | Young Lord<br>Dummond                             | 2003.11.25 | Outer House<br>Court of<br>Session |
| <b>Appointment</b>                      | <b>Bruce v Kordula [2001] ScotSC 113. CA79/14/00</b><br>Arbitrator to be appointed by a non-existent body. Held : court would not substitute an actual body, however close the title, since it could not be assumed that is what the parties meant. The arbitration clause failed for uncertainty.   | Hamilton Lord                                     | 2001.05.15 | Outer House<br>Court of<br>Session |
| <b>Appointment</b>                      | <b>Southesk Trust Com Ltd &amp; Anor, Re Application For Judicial Review [1998] ScotCS 108</b><br>Validity of the decision by Secretary of State to appoint an arbiter to a dispute pursuant to the Agriculture Holdings Act.  | Dawson Lord                                       | 1998.12.18 | Court of<br>Session                |
| <b>Arrestments</b>                      | <b>Global Marine Drilling Co v Triton Holdings Ltd [2000] ScotCS 21</b><br>Arrestment in support of London Arbitration.  | MacFadyen Lord                                    | 2000.01.26 | Court of<br>Session                |
| <b>Arrestments</b>                      | <b>Global Marine Drilling Company v Triton Holdings Ltd [1999] ScotCS 277</b><br>Assertion that arrestments in support of arbitration nimious and oppressive.  | Marnock Lord                                      | 1999.11.23 | Outer House<br>Court of<br>Session |
| <b>Arrestments – recall application</b> | <b>FG Hawkes (Western) Ltd v Szipt Ltd [2007] ScotCS CSOH_57</b><br>Failed application to recall arrestments made in respect of cargo claims being pursued by arbitration in China.  | Emslie Lord                                       | 2007.03.21 | Outer House<br>Court of<br>Session |
| <b>Auditor's report</b>                 | <b>Tods Murray WS v. McNamara [2007] ScotCS CSIH_19</b><br>Claim – solicitor's accounts : counter claim – negligence. Appeal successful – the auditor and the lower court should have allowed an uplift for special responsibility.  | Clerk Lord Justice<br>Philip Lord<br>MacLean Lord | 2007.03.21 | Inner House<br>Court of<br>Session |
| <b>Brussels Convention</b>              | <b>Liffe Administration and Management v. Scottish Ministers [2003] ScotCS 357</b><br>Brussels Convention does not extend to arbitration – unless concerning public authority duties - but it does extend to ombudsmen and other forms of ADR.   | MacFadyen Lord                                    | 2003.12.04 | Outer House<br>Court of<br>Session |

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| <b>Case State</b>                             | <b>East Renfrewshire Council v. J H Lygate And Partners [2005] ScotCS CSIH_27</b><br>Rent review arbitration  | Clerk Lord Justice                                  | 2005.04.16 | Inner House<br>Court of<br>Session |
| <b>Case state</b>                             | <b>Rogerson Roofing Ltd v Hall &amp; Tawse Scotland Ltd [2000] ScotCS 11</b><br>Construction contract : respective responsibilities of contractor and sub-contractor – title to sue.  | President Lord<br>Sutherland Lord<br>Weir Lord      | 2000.01.14 | Inner House<br>Court of<br>Session |
| <b>Case stated</b>                            | <b>Mowlem (Scotland) Ltd v. Inverclyde Council [2003] ScotCS 248</b><br>Dispute about whether or not an arbitrator should have made a case stated reference under s 3 of the Administration of Justice (Scotland) Act 1972. In the circumstances the court agreed that the arbitrator was correct in making the reference and not moving direct to an award.            | President Lord<br>Marnoch Lord<br>Wheatley Lord     | 2003.10.01 | Inner House<br>Court of<br>Session |
| <b>Case stated</b>                            | <b>Wiltshier Construction (Scotland) Ltd v. Drumchapel Housing Co-operative Ltd [2003] ScotCS 21</b><br><b>Case stated from construction arbitration.</b>   | President Lord<br>Marnoch Lord<br>Macfadyen Lord    | 2003.01.29 | Inner House<br>Court of<br>Session |
| <b>Case stated</b>                            | <b>Moffat v Longmuir [2000] ScotCS 218</b><br>Partnership – dissolution on death : arbitration – case stated to court.  | Cameron Lord<br>Osborne Lord<br>Reed Lord           | 2000.08.04 | Inner House<br>Court of<br>Session |
| <b>Case stated</b>                            | <b>Loudonhill Contracts Ltd v John Mowlem Construction Ltd [2000] ScotCS 186</b><br>Construction dispute. Clause 3 ICE Contract.  | President Lord<br>Cameron Lord<br>Cowie Lord        | 2000.07.06 | Inner House<br>Court of<br>Session |
| <b>Case stated</b>                            | <b>Norwest Holst Construction Ltd v Dumfries &amp; Galloway Council [1999] ScotCS 84</b><br>Whether or not a statement of final account had been issued and whether that was conclusive evidence that the works were satisfactory. In the circumstances the final account had been agreed, so the certificate was final and conclusive for the purposes of arbitration. | Clerk Lord Justice                                  | 1999.03.19 | Court of<br>Session                |
| <b>Case stated - appeal</b>                   | <b>Alexander v Royal Hotel (Caithness) Ltd Per Taylor [2000] ScotCS 255</b><br>Appeal from the determination of a judge in respect of a case stated pursuant to s22(2)(d) Agricultural Holdings (Scotland) Act 1991.  | Cameron Lord<br>Gill Lord<br>Dawson Lord            | 2000.10.06 | Inner House<br>Court of<br>Session |
| <b>Case stated.</b>                           | <b>John Mowlem &amp; Company Plc v. Akeler [2002] ScotCS 150</b><br>Construction contract : case stated by arbiter  | President Lord<br>Kirkwood Lady<br>Cosgrove Lord    | 2002.05.28 | Inner House<br>Court of<br>Session |
| <b>Cast Stated</b>                            | <b>Palmer, Executors of v. Shaw [2003] ScotCS 318</b><br>Scottish Land Court.   | Clerk Lord Justice<br>Kirkwood Lord<br>Osborne Lord | 2003.12.17 | Inner House<br>Court of<br>Session |
| <b>Certification of release of retentions</b> | <b>The Miller Group Ltd v Scottish Coal Company Ltd [1998] ScotCS 75</b><br>The decision making process for the release of retention monies in a construction contract  | Cameron Lord  | 1998.11.24 | Court of<br>Session                |

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| <b>Challenge – time bar : art 34 Model Arbitration Rules</b> | <b>Tor Corporate AS v. Sinopec Group Star Petroleum Corporation Ltd [2007] ScotCS CSOH_86 : Bailli</b><br>Time bar to challenge arbitration award subject to UNCITRAL Arbitration Rules. Application submitted outside the three month time bar - and accordingly rejected.  | Paton : Lady   | 2007.05.29 | Outer House<br>Court of<br>Session |
| <b>Challenge : Question of law or fact</b>                   | <b>Codona v Taylor &amp; Anor For Judicial Review [2001] ScotCS 124</b><br>Challenge to decisions of the Appeals Tribunal of the Showmen's Guild of Great Britain . <i>“It is, I think, well established that in Scotland decisions of arbiters involving error of law other than jurisdictional error of law are protected from being overturned by means of judicial review and, as was indicated in the authorities to which I was referred by counsel for the respondent there is an analogy between an ordinary private arbitration and the rules of a voluntary association which ab ante sets up an adjudicatory tribunal to resolve disputes between members concerning the affairs of the association.”</i> | Eassie Lord  | 2001.05.25 | Outer House<br>Court of<br>Session |
| <b>Challenge to award</b>                                    | <b>Hanover (Scotland) Housing Assoc. Ltd for J.R. of a Decision of Michael Sandford, Arbitrator [2002] ScotCS 2</b><br>Arbitrator proposed variations to method of computation. These are clear and should be followed by the pursuer. If the pursuer is not content, he should put forward further proposals to the arbitrator for consideration.   | Wheatley Lord  | 2002.11.04 | Outer House<br>Court of<br>Session |
| <b>Challenge to award</b>                                    | <b>Co-operative Wholesale Society Ltd v. Ravenseft Properties Ltd [2002] ScotCS 98</b><br>Challenge to award of rent review tribunal.  | MacFadyen Lord                                       | 2002.04.08 | Outer House<br>Court of<br>Session |
| <b>Conflicts</b>   | <b>Caledonia Subsea Ltd v. Micoperi SRL [2002] ScotCS 345</b><br>Whether Scottish law and jurisdiction applied or Egyptian Law and arbitration. Scottish Law & jurisdiction applied.   | President Lord<br>Cameron Lord<br>Marnoch Lord       | 2002.07.12 | Inner House<br>Court of<br>Session |
| <b>Conflicts : jurisdiction</b>                              | <b>Caledonia Subsea Ltd v Micoperi SRL [2001] ScotCS 56</b><br>Whether Scots law and jurisdiction applied : or Egyptian Law and arbitration in Cairo. Held : Scots Law & jurisdiction.   | Hamilton Lord  | 2001.3.09  | Outer House<br>Court of<br>Session |
| <b>Contract interpretation</b>                               | <b>Heritage Fisheries Ltd v Innes Ker, Baronet, Duke Of Roxburghe [1999] ScotCS 134</b><br>Challenge to the interpretation placed on the terms of a deed by an arbitrator.   | President Lord<br>Caplan Lord<br>Nimmo Smith Lord    | 1999.06.04 | Inner House<br>Court of<br>Session |
| <b>Costs : Co-defenders</b>                                  | <b>Ashley Bell &amp; George Wimpey v East Renfrewshire Council [2006] CSOH 9</b><br>Scottish procedure : Held : the losing party will not be required to pay out twice for legal costs of winning party - where the winning parties should have provided joint representation : they have the right to separate presentation but only the first party's costs are recoverable.   | R F MacDonald QC<br>(Sitting as a<br>Temporary Judge | 2005.12.09 | Outer House<br>Court of<br>Session |
| <b>Declaration</b>   | <b>Logan v. Scottish Water [2005] ScotCS CSIH_73</b><br>Application for declaration of the law by Land Tribunal.   | Osborne Lord   | 2005.11.01 | Inner House<br>Court of<br>Session |
| <b>Declaration</b>   | <b>HJ Banks &amp; Company Ltd v. Shell Chemicals UK Ltd [2005] ScotCS CSOH_123</b><br>Application for a declaration that the pursuers had a right to arbitrate. Held : They were not parties to the arbitration contact and had no right to arbitration.   | Clarke Lord  | 2005.09.08 | Outer House<br>Court of<br>Session |
| <b>Double jeopardy</b>                                       | <b>Waydale Ltd v DHL Holdings (UK) Ltd [1999] ScotCS 300</b><br>Whether or not a claim was res judicata – viz already settled by prior litigation.   | Coulsfield Lord<br>Osborne Lord<br>Morison Lord      | 1999.12.15 | Inner House<br>Court of<br>Session |

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| <b>Evidence : arbitration submissions</b>  | <b>Grant's Executors v Grant [1999] ScotCS 253 (29 October 1999)</b><br>Dispute as to dispositions in a will : Current arguments before the court contradicted the evidence previously submitted to arbitration.   | Reed Lord                                    | 1999.10.29 | Outer House<br>Court of<br>Session                             |
| <b>Expert Determination</b>                | <b>Cleland v Smith [2005] ScotCS CSIH_47</b><br>Arbitration and expert determination distinguished.  | Lords President,<br>Nimmo Smith,<br>Emslie   | 2005.04.29 | 1 <sup>st</sup> Division<br>Inner House<br>Court of<br>Session |
| <b>Expert determination or arbitration</b> | <b>Age Ltd, Re Application For Judicial Review [2000] ScotCS 219</b><br>Whether a dispute was submitted to an expert for informal determination or to an arbiter for formal determination.   | Hardie Lord                                  | 2000.08.08 | Outer House<br>Court of<br>Session                             |
| <b>Fees</b>                                | <b>Frame v Fraioli &amp; Anor [1998] ScotCS 23 (9 October 1998)</b><br>Action by arbiter for recovery of fees in relation to a dispute as to termination of a partnership.   | Young Lord<br>Drummond                       | 1998.10.09 | Outer House<br>Court of<br>Session                             |
| <b>Fees – legal advisor</b>                | <b>Murray WS v Arakin Ltd [2006] ScotCS CSOH_64</b><br>Recovery of professional fees by solicitors in support of arbitral process.   | Mackay Lord                                  | 2006.04.28 | Outer House<br>Court of<br>Session                             |
| <b>Functus officio</b>                     | <b>Sim Group v Neil Jack [2002] Scottsc Outer Ct</b><br>Arbitrator issued a final award. Subsequently a party sought to refer another dispute to the arbitrator. Held : Functus Officio: The appointment procedure must be followed to make a fresh appointment. | Clarke Lord                                  | 2002.06.05 | Outer House<br>Court of<br>Session                             |
| <b>Implied terms</b>                       | <b>E &amp; J Glasgow Ltd v. UGC Estates Ltd [2005] ScotCS CSOH_63</b><br>When can terms be implied into a construction contract? In the circumstances, assertions of lack of information leading to variations and delay failed.                                 | Eassie Lord                                  | 2005.05.16 | Outer House<br>Court of<br>Session                             |
| <b>Insolvency</b>                          | <b>James Scott Ltd v Apollo Engineering Ltd [2000] ScotCS 18</b><br>Case sisted to arbitration : during the course of the arbitration party entered into liquidation. Dispute here involving substitute administrator.   | Johnston Lord                                | 2000.01.24 | Outer House<br>Court of<br>Session                             |
| <b>Interest</b>                            | <b>Bradford &amp; Bingley Building Society v Thorntons Plc [1998] ScotCS 78</b><br>Dispute as to interest payable on award of a rent review tribunal. Rate determined by independent surveyor.   | Hamilton Lord                                | 1998.11.26 | Court of<br>Session  |
| <b>Interest : award</b>                    | <b>Charles Brand Ltd v Orkney Islands Council [2001] ScotCS 18</b><br>Whether arbiter erred in awarding interest : refusal to state a case. Dispute with regard to ICE 5 <sup>th</sup> Edition Construction contract.  | Kirkwood Lord<br>Eassie Lord Morison<br>Lord | 2001.01.24 | Inner House<br>Court of<br>Session                             |
| <b>Interest : costs</b>                    | <b>Presslie v Cochrane McGregor Group Ltd [1998] ScotCS 29</b><br>Raises questions rather than answers about interest on award and costs of litigation preceding arbitration and the arbitration itself.   | Penrose Lord                                 | 1998.10.15 | Court of<br>Session  |
| <b>Irregularity</b>                        | <b>Fullarton Computer Industries Ltd v Central Arbitration Committee [2001] ScotCS 168</b><br>Review of proceedings of the CAC with regard to application for Union recognition. No irregularity.  | Johnston Lord                                | 2001.06.28 | Outer House<br>Court of<br>Session                             |

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| <b>Irritancy</b>                           | <b>Euro Properties Scotland Ltd v Alam [2000] ScotCS 170</b><br>Whilst the central issue in this dispute fell to arbitration a question as to the reasonableness of relying on a claim of irritancy fell to be determined first by the court.   | MacFadyen Lord                                       | 2000.06.20 | Outer House<br>Court of<br>Session |
| <b>Judicial review -<br/>jurisdiction</b>  | <b>Dumfries &amp; Galloway Council, Re Application For Judicial Review [2000] ScotCS 217</b><br>Pursuant to the Roads (Scotland) Act 1984 responsibility for a road was transferred to the Council. Question whether or not the minister entitled to do so and whether dispute should be referred to arbitration.         | MacKay Lord  | 2000.08.02 | Outer House<br>Court of<br>Session |
| <b>Jurisdiction</b>                        | <b>The Scottish Coal Company Ltd, Re Petition for Suspension and Interdict [2004] ScotCS 186</b><br>Two tier dispute resolution process in contract : specific disputes to be referred solely to binding adjudication : all others to the court. Declaration by court as to which disputes to be referred to adjudicator. | Bracadale Lord                                       | 2004.07.29 | Outer House<br>Court of<br>Session |
| <b>Jurisdiction</b>                        | <b>Hiskett &amp; Ors v. G &amp; G Wilson &amp; Ors [2002] ScotCS 281 (18 October 2002)</b><br>Whether dispute subject to s60 Agricultural Holdings (Scotland) Act 1991  | MacFadyen Lord                                       | 2002.10.18 | Outer House<br>Court of<br>Session |
| <b>Jurisdiction</b>                        | <b>Clancy v Caird [2000] ScotCS 96</b><br>Temporary judge appointed to dispute. Having engaged in the process without demure, even if there was scope to dispute jurisdiction that had been waived.   | Sutherland Lord<br>Coulsfield Lord<br>Penrose Lord   | 2000.04.04 | Inner House<br>Court of<br>Session |
| <b>Jurisdiction</b>                        | <b>Southesk Trust Co Ltd &amp; Anor v Secretary Of State For Scotland [2000] ScotCS 80</b><br>judicial review of the Secretary of State's appointment of an arbiter under Section 62(5) of the Agricultural Holdings (Scotland) Act 1991  | President Lord<br>Kirkwood Lord<br>Caplan Lord       | 2000.03.23 | Inner House<br>Court of<br>Session |
| <b>Jurisdiction</b>                        | <b>MacKinnon, Re Application for Judicial Review [2000] ScotCS 60</b><br>During the course of judicial review hearings question raised as to whether by virtue of Section 16(3) of the Roads (Scotland) Act 1984. the matter should be determined by an arbiter.  | Osborne Lord   | 2000.03.08 | Outer House<br>Court of<br>Session |
| <b>Jurisdiction</b>                        | <b>McKenzie v Law Society Of Scotland [1999] ScotCS 168</b><br>What was the jurisdiction accorded to the Scottish Law Society Disciplinary committee – same principles as to jurisdiction in arbitration applied.   | Prosser Lord<br>Osborne Lord<br>Abernethy Lord       | 1999.07.09 | Inner House<br>Court of<br>Session |
| <b>Jurisdiction –<br/>forum conveniens</b> | <b>Compagnie Commercial Andre SA v Artibell Shipping Company Ltd [1999] ScotCS 2</b><br>Charterparty dispute  | MacFadyen Lord                                       | 1999.01.07 | Court of<br>Session                |
| <b>Jurisdiction :</b>                      | <b>Astilleros Zamakona SA v. Mackinnons [2002] ScotCS 343</b><br>Whether there was a contract subject to Scottish Jurisdiction or whether contract was subsumed into another contract subject to London Jurisdiction and arbitral provisions. Held : The latter – case dismissed for lack of jurisdiction.                | MacFadyen Lord                                       | 2002.08.26 | Outer House<br>Court of<br>Session |
| <b>Jurisdiction :<br/>Appeal from IAT</b>  | <b>Tehrani v Secretary of State for the Home Department (Scotland) [2006] UKHL 47</b><br>Whether English or Scottish court had jurisdiction over appeal / judicial review of IAT.   | Nicholls ,<br>Hope,<br>Scott,<br>Rodger,<br>Carswell | 2006.10.18 | House of<br>Lords                  |
| <b>Jurisdiction :<br/>Limitation</b>       | <b>Orkney Islands Council [2001] Scotcourts [2001] ScotCS 222 P59/501</b><br>Jurisdiction : limitation : Court held whether limitation applied and whether there was a dispute were matters for the arbitrator not the court.   | Johnson Lord   | 2001.09.21 | Outer House<br>Court of<br>Session |

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| <b>Jurisdiction : termination of relationship</b>                  | <b>Pirie v Shore Potters Society [2003] Sc 111 ; A136/93</b><br>Parties to an arbitration clause : Members of a society agreed to arbitrate differences. The applicant had been expelled. In consequence he was no longer a member and not entitled to arbitration.   | Bonomy Lord  | 2003.04.08 | Outer House<br>Court of<br>Session |
| <b>Jurisdiction : time bar</b>                                     | <b>East Of Scotland Water Authority v Logan [1999] ScotCS 242 (19 October 1999)</b><br>Where parties made a joint reference to a Lands Tribunal should a question as to a statutory time bar be determined by the court first – or does a joint reference amount to a waiver of the time bar.   | McCluskey Lord<br>Coulfield Lord<br>MacLean Lord             | 1999.10.19 | Inner House<br>Court of<br>Session |
| <b>Late application</b>  | <b>Clarke v. MacKenzie [2005] ScotCS CSIH_7</b><br>Arbitration under s60 of the Agricultural Holdings (Scotland) Act 1991. Late application to court thrown out. If this resulted in loss of right to challenge the arbitral award this was the pursuers own fault for delaying and not misconduct on the behalf of others.   | MacFadyen Lord   | 2005.01.14 | Inner House<br>Court of<br>Session |
| <b>Legal fees</b>  | <b>Tods Murray W.S. v. Arakin Ltd [2003] ScotCS 273</b><br>Action to recover legal fees related to representation at an arbitration.  | Smith Lady   | 2003.10.31 | Outer House<br>Court of<br>Session |
| <b>Limitation : accrual of action</b>                              | <b>Scottish Equitable Plc v Miller Construction Ltd [2001] ScotCS 214 : bailli</b><br>Application by arbiter for declaration regarding the time when action accrued and accordingly whether or not the claims were out of time.   | Prosser Lord ;<br>Milligan Lord ;<br>Kingarth. Lord          | 2001.08.31 | Inner House<br>Court of<br>Session |
| <b>Notice : Withholding Notice : Effect : Plant Hire – oil-rig</b> | <b>Peakwell Management Ltd v Globalsantafe Drilling UK Ltd [2006] S.Ct A2661/05: Scottish Court</b><br>Plant Hire / drilling rig : The issue of a withholding notice under the terms of the contract resulted in a dispute crystallising : consequently, in the absence of resolution of the dispute no sums became due - so no action for summary enforcement of sums allegedly due under an interim payment scheme could lie. | Young Sheriff<br>Principal Sir<br>Stephen S T Young<br>Bt QC | 2006.02.07 | Aberdeen<br>Sheriff<br>Court       |
| <b>Pensions : case stated</b>                                      | <b>Brooks v Civil Aviation Authority [2000] ScotCS 181</b><br>Case stated : whether ombudsman correct in relying on prior determination of arbitral tribunal.   | President Lord<br>Bonomy Lord<br>Cowie Lord                  | 2000.06.30 | Inner House<br>Court of<br>Session |
| <b>Reasons - adequacy</b>  | <b>Di Ciacca v. Scottish Ministers [2003] ScotCS 95 (2 April 2003)</b><br>Whether planning tribunal provided sufficient reasons for decision : Held : in the circumstances, YES   | Reed Lord  | 2003.04.02 | Outer House<br>Court of<br>Session |
| <b>Recall of Interim order</b>                                     | <b>Collins And Sons Ltd v. CGU Insurance Plc [2006] ScotCS</b><br>Interim order – granted on conclusion that arbitration clause invalid recalled : Further trial of separate issue to determine the validity of the arbitration clause to follow.   | Clerk Lord Justice   | 2006.06.22 | Inner House<br>Court of<br>Session |
| <b>Refusal to state a case</b>                                     | <b>Bryant Homtes (Scotland) Ltd v Secretary Of State For Scotland [2001] ScotCS 130</b><br>Application to review a refusal by arbiter to state a case to the court.   | Prosser Lord<br>Johnston Lord<br>Caplan Lord                 | 2001.05.30 | Inner House<br>Court of<br>Session |
| <b>Refusal to state a case</b>                                     | <b>Bryant Homes (Scotland) Ltd v SS For Scotland Per Greater Glasgow Health Board [2000] ScotCS 185</b><br>Application to court to review refusal by arbiter to state a case to the court.  | Cameron Lord<br>Osborne Lord<br>Reed Lord                    | 2000.07.06 | Inner House<br>Court of<br>Session |

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| <b>Rent review</b>                                | <b>Douglas Shelf Seven Ltd v Co-Operative Wholesale Society Ltd [2007] ScotCS CSOH_53</b><br>Dispute on revaluation of rent of commercial premises.  | Reed Lord   | 2007.03.02 | Outer House<br>Court of<br>Session |
| <b>Rent review</b>                                | <b>Homebase v. Scottish Provident Institution [2003] ScotCS 173</b><br>Rent review tribunal reference.   | Marnoch Lord<br>Macfadyen Lord<br>Abernethy Lord    | 2003.06.13 | Inner House<br>Court of<br>Session |
| <b>Rent review</b>                                | <b>Co-Operative Wholesale Society Ltd v Ravenseft Properties Ltd [2001] ScotCS 176</b><br>Application for rectification – involves rent review tribunal proceedings.   | MacFadyen Lord                                      | 2001.07.04 | Outer House<br>Court of<br>Session |
| <b>Rent review challenge</b>                      | <b>A C Stoddart &amp; Sons, Colstoun (1995) (A Firm) v Balfour Thomson CA [2007] ScotCS CSIH_38</b><br>Appeal from Scottish Land Court : Landlord & Tenant dispute. Appropriate time for a review – refusal to conduct review overturned by the Court and returned to the SLC to conduct the review.   | Clerk Lord Justice<br>Macfadyen Lord<br>Eassie Lord | 2007.06.01 | Inner House<br>Court of<br>Session |
| <b>Representation - status</b>                    | <b>Miller v Law Society Of Scotland Council [1999] ScotCS 296</b><br>Question as to what work amounts to acting as a solicitor : ibid : representing a client in arbitration is not acting as a solicitor.   | MacFadyen Lord                                      | 1999.12.15 | Outer House<br>Court of<br>Session |
| <b>Security - discrimination</b>                  | <b>Fallimento La Pantofola D'Oro SPA v Blane Leisure Ltd [2000] ScotCS 142</b><br>Court refused to entertain an argument that awarding security of costs against an Italian Company amounted to discrimination contrary to Community Law. Note – court had previously declined to sist to arbitration  | Hamilton Lord                                       | 2000.05.31 | Outer House<br>Court of<br>Session |
| <b>Settlement - tax</b>                           | <b>Hojgaard v. Forth Estuary Transport Authority [2004] ScotCS 239</b><br>A payment dispute was settled during the course of an arbitration with a requirement that a builders tax certificate be supplied. The contractor's certificate had lapsed. Held : in the absence of a certificate – no payment due since otherwise it would render the payer liable to account to the revenue for tax. | Eassie Lord   | 2004.11.03 | Outer House<br>Court of<br>Session |
| <b>Sist - recall</b>                              | <b>Tonner v. Reiach And Hall [2005] ScotCS CSOH_103</b><br>Negligence claim sisted in 1988. In 2005 the pursuers sought in this action to recall the sist and continue the litigation. Litigation to continue on whether case should be absolved – want of prosecution.  | Smith Lady  | 2005.08.05 | Outer House<br>Court of<br>Session |
| <b>Sist to arbitration</b>                        | <b>Marodi Service di D. Mialich &amp; C.s.a.s. v. Mikkal Myklesbusthaug Rederi AS [2002] ScotCS 111</b><br>Waiver or right to arbitration by engagement in judicial process. Implications of Brussels Convention   | Coutts QC T.G.<br>Temporary judge                   | 2002.04.18 | Lord                               |
| <b>Sist to arbitration</b>                        | <b>Cameron (Scotland) Ltd v Melville Dundas Ltd [2001] ScotCS 46</b><br>Construction dispute. Main and sub contract : whether the defender was a party to a contract containing an arbitration clause. Held : Not a party – sist refused.  | Hamilton Lord                                       | 2001.02.28 | Outer House<br>Court of<br>Session |
| <b>Sist to arbitration; Separation settlement</b> | <b>Bentley v Harvie [1999] ScotCS 83</b><br>Couple married in Scotland. Divorced in Ontario and entered a divorce settlement agreement – variations to which were subject to the law of Ontario and arbitration. Pursuer sought to enforce payment under the settlement. No question of variation. Application to sist to arbitration in Ontario refused.  | MacLean Lord  | 1999.03.19 | Court of<br>Session                |

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| <b>Stay : liquidation proceedings</b>       | <b>McGruther v Blin [2003] ScotSC P30/01</b><br>Liquidation proceedings cisted pending outcome of arbitration by lower court. Appeal repelled.  | Hamilton Lord;<br>McCluskey Lord;<br>Weir Lord       | 2003.12.23 | Extra-Div<br>Inner House<br>Court of<br>Session |
| <b>Stay : Liquidation proceedings</b>       | <b>McGruthor &amp; Apollo Engineering [2002] P310/01</b><br>Liquidation proceedings cisted by lower court pending outcome of arbitration. Appeal repelled on the facts.   | Smith Lady   | 2002.11.26 | Outer House<br>Court of<br>Session              |
| <b>Stay : want of prosecution</b>           | <b>Newman Shopfitters Ltd v. M.J. Gleeson Group Plc [2003] ScotSC 17</b><br>Want of prosecution : Case cisted for want of prosecution – originally destined for arbitration – claimants delayed excessively and lost right of action.   | MacPhail Sheriff<br>Principal Ian                    | 2003.03.04 | Sheriff's<br>Court                              |
| <b>Stay pending arbitration</b>             | <b>Conti, Re Application for An Order In Terms Of s653 Companies Acts 1985 [2000] ScotCS 10</b><br>The court could not determine the issues before it until an arbitral tribunal had issued its determinations in that depending upon that decision the pursuer either had no liability or would be liable. | Prosser Lord<br>Marnoch Lord<br>Weir Lord            | 2000.01.14 | Inner House<br>Court of<br>Session              |
| <b>Stay to arbitration - waiver</b>         | <b>La Pantofola D'Orso S.P.A. v Blaine [1999] ScotsSC 261 ; CA107/14(20)/97</b><br>Application to cist to arbitration rejected. The litigation had proceeded without objection. Claimant had waived right to arbitration.   | Hamilton Lord  | 1999.11.05 | Outer House<br>Court of<br>Session              |
| <b>Stay to arbitration &amp; waiver</b>     | <b>George Martin (Builders) Ltd v Shaheed Jamal [2000] Scotsc 17 ; A1291/98</b><br>Waiver : application to sist hearing to arbitration denied. By participating in the litigation without complaint the right to arbitrate was lost.  | Steward Sheriff AL                                   | 2000.07.07 | Sheriff's<br>Court<br>Dundee                    |
| <b>Stay to arbitration : waiver</b>         | <b>Wylie v Corrigan [1998] ScotSC 24</b><br>Application to cist to arbitration rejected. The litigation had proceeded without objection and decisions entered upon the record. Applicant had waived right to arbitration.   | Coulsfield Lord<br>Milligan Lord<br>Allanbridge Lord | 1998.10.13 | Inner House<br>Court of<br>Session              |
| <b>Third party rights</b>                   | <b>McIntosh Ltd v Balfour Beatty Group Ltd &amp; Anor [2006] ScotCS CSOH_197</b><br>Construction management contract – interrelationship with the works contract under JCT – issue : extensions of time. Sought to establish a tripartite relationship and trial akin to arbitration.                       | Young Lord<br>Drummond                               | 2006.12.21 | Outer House<br>Court of<br>Session              |
| <b>Want of due prosecution – strike out</b> | <b>Tonner v Reiach &amp; Hall [2007] ScotCS CSIH_48 : Bailli</b><br>Voluntary Sist - application to withdraw sist - inordinate delay in prosecution of case - dismissal of action : case struck out for want of prosecution.  | Abernethy Lord<br>Philip Lord<br>Edward Sir David    | 2007.06.12 | Inner House<br>Court of<br>Session              |