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### MAIN AREAS OF PRACTICE:

Competition and Regulation  
Discrimination and Equality  
Education Law  
Election  
Employment Law  
Environmental Law and Natural  
Resources  
EU Law  
Human Rights  
Immigration, Asylum and Free  
Movement  
Public and Private International  
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### RECENT CASES

**Anwar v. Secretary of State for Business, Energy and Industrial Strategy UKSC 2020/0074 (case heard on 25 February 2021, judgment awaited)**

Whether or not a failure to make express statutory provision to allow for employment tribunals to pronounce protective freezing orders against respondents in discrimination cases pending before them constituted a breach of the UK's obligation under EU law to provide for remedies sufficient to ensure effective legal protection in the fields covered by Union law.

**Keatings v Advocate General for Scotland [2021] CSIH 25, 2021 SLT 729, [2021] 4 WLUK 380 (Inner House of the Court of Session, 30 April 2021)**

A political campaigner's action for declarators to the effect that the holding of a referendum on Scottish independence would be within the powers of the Scottish Parliament and that a draft Scottish Independence Referendum Bill would be within legislative competence, was refused on the basis that it was hypothetical, academic and premature. Furthermore, the action was inconsistent with the structure of the Scotland Act 1998. The statutory scheme for determining whether a bill would be within the powers of the Parliament excluded any common law right to a declarator.

**Finucane v Revenue and Customs Commissioners [2021] CSOH 38, 2021 SLT 665, [2021] 4 WLUK 34 (Outer House of the Court of Session, 14 April 2021)**

An application for judicial review by a taxpayer of the lawfulness of loan charges imposed by HMRC under reference to the Finance (No. 2) Act 2017 Sch.11 and Sch.12 was dismissed on the basis that the taxpayer had an alternative statutory remedy in the form of an appeal to the specialist tax tribunals that he had failed to exhaust. In any event, while the circumstances were clearly sufficient to engage the petitioner's EU law free movement rights, his right to free movement of capital had not been infringed because the case was concerned predominantly with his EU law freedom to provide services.

**Lancashire Festival of Hope with Franklin Graham Limited v. Blackpool Borough Council and Blackpool Transport Services Limited [2021] F00MA124 (Manchester County Court, 1 April 2021)**

In ordering the removal from its buses of advertisements for a forthcoming religious event a local authority was found to have directly discriminated against the plaintiff because of religion or belief in contravention of the Equality Act 2010 and separately contrary to the Human Rights Act 1998 to have breached ECHR art. 14 non-discrimination provisions and discriminated against the Claimant in relation to its ECHR art. 10 free expression rights.

**Philip v Scottish Ministers [2021] CSOH 32, 2021 SLT 559 [2021] 3 WLUK 406 (Outer House of the Court of Session, 24 March 2021)**

The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No.11) Regulations 2021 constituted a disproportionate interference with the ECHR art.9 right of ministers and church leaders of Christian churches, and a Roman Catholic priest, and with their constitutional rights, and were outside the legislative competence of the Scottish Ministers.

**For Women Scotland Ltd v Lord Advocate [2021] CSOH 31, 2021 SLT 639, [2021] 3 WLUK 377 (Outer House of the Court of Session, 23 March 2021) (Appeal outstanding)**

The Gender Representation on Public Boards (Scotland) Act 2018 was within the legislative competence of the Scottish Parliament and did not offend against the fundamental principle of equality of treatment.

**Billy Graham Evangelistic Association v Scottish Event Campus Ltd [2021] SC GLW 9 [2021] 2 WLUK 227 (Glasgow Sheriff Court, 16 Feb 2021)**

The sheriff excluded certain averments from probation and allowed a proof, in an action raised by a representative religious group against the owner of an exhibition and conference venue following the latter's termination of a contract for the hire of the venue, where the pursuer sought to prove that the defender breached a protected characteristic in purporting to cancel the contract without legitimate reason, and then, using the COVID-19 pandemic as a cover, chose to cancel rather than reschedule the event.

**Keatings v Advocate General for Scotland [2021] CSOH 16, 2021 SLT 233, [2021] 2 WLUK 67 (Outer House of the Court of Session, 5 February 2021)**

A political campaigner's action for declarator that the Scottish Parliament had the power to legislate for a referendum on Scottish independence without requiring the consent of the UK Government or further amendment of the Scotland Act 1998 was dismissed on the basis that it was hypothetical, academic and premature, and the pursuer lacked standing to bring it.

**Arbitration Appeal (No. 4 of 2020) [2021] CSOH 14 [2021] 2 WLUK 67 (Outer House of the Court of Session, 2 February 2021)**

While no express reference to the Arbitration (Scotland) Act 2010 s.9 or r.69 of the Scottish Arbitration Rules was required in order for the terms of an arbitration agreement to be inconsistent with or disapply the right to seek leave for a legal error appeal, the language had to be sufficiently clear to indicate that a right to appeal had been agreed to be excluded or waived. The expression "final and binding" meant that the award resolved the issues raised in the arbitration and that resulted in the principle of res judicata being applicable to those issues. The wording was not of itself inconsistent with a right to appeal or seek leave to appeal in terms of the Scottish Arbitration Rules and it did not exclude or waive any such rights.

**Jersey Choice Ltd v HM Treasury [2020] EWHC 3258 (Ch) [2020] 11 WLUK 4667 (Chancery Division, 27 November 2020) (Appeal outstanding)**

There were no reasonable grounds for a company's claim that the Finance Act 2012 Pt 7 s.199(3), which removed VAT relief from low value goods sold to UK customers using mail order from the Channel Islands, was in breach of EU law. The claim was also an abuse of process, given that a challenge to the legislation had previously been rejected in R. (on the application of Minister for Economic Development of Jersey) v Revenue and Customs Commissioners [2012] EWHC 718 (Admin), [2012] STC 1113, [2012] 3 WLUK 466.

**Keatings v Advocate General for Scotland [2020] CSOH 75, 2021 SLT 8, [2020] 7 WLUK 440 (Outer House of the Court of Session, 14 April 2021)**

A protective costs order was refused where three of the criteria in R. (Corner House Research) v Secretary of State for Trade and Industry [2005] EWCA Civ 192, [2005] 1 WLR 2600, [2005] 3 WLUK 75 had not been met.

**R. (on the application of Cornerstone (North East) Adoption and Fostering Service Ltd) v Office for Standards in Education, Children's Services and Skills (OFSTED) [2020] EWHC 1679 (Admin) [2021] PTSR 14, [2020] IRLR 774, [2020] 7 WLUK 67 (Queen's Bench Division (Administrative Court) 27 July 2020) (Appeal outstanding to EWCA)**

A policy adopted by an independent religiously based fostering agency which required carers to refrain from sexual activity outside the bonds of a Christian opposite sex marriage unlawfully discriminated, directly and indirectly, against gay men and lesbians.

**LC Management Services (Scotland) Ltd v Highlands and Islands Enterprise [2020] CSIH 37, 2020 SLT 777, [2020] 6 WLUK 408 (Inner House of the Court of Session, 30 June 2020)**

A reclaiming motion by a company against the dismissal of its action for declarator that awards of regional investment aid made by Highlands and Islands Enterprise to a competitor were unlawful state aid on account of the failure to notify the European Commission would be refused where the notification threshold was €15m. The formula in the General Block Exemption Regulation No.800/2008 art.6(2) was straightforward and admitted of a simple calculation.

**Prior v Scottish Ministers [2020] CSIH 36, 2020 SC 528, [2020] 6 WLUK 407 (Inner House of the Court of Session, 30 June 2020)**

Reclaiming motions by individuals against the refusal of their petitions seeking declarator that the Court of Session Act 1988 s.27B, 27C and 27D, and the Act of Sederunt (Rules of the Court of Session 1994) 1994 para.58.7-58.10 were unlawful, would be refused. The Inner House held that the fact that a second, different Outer House judge might refuse, on the papers, a request for a review of a refusal of permission on the papers by another Outer House judge – and that this second decision was not appealable and brought the proceedings to an end - was not unlawful. The failure to allow for any form of oral hearing at any stage of the proceedings was held to be Convention compatible

**Craig (James) v HM Advocate [2020] HCJAC 22, 2020 JC 258, [2020] 6 WLUK 9 (High Court of Justiciary/Criminal Appeal Court, 3 June 2020) (Appeal outstanding to UKSC)**

An appeal by a United Kingdom national against a sheriff's decision to order his extradition to the United States of America notwithstanding the previously established illegality of the failure by the UK Government to bring the forum bar provisions into force in Scotland would be refused on the basis that his extradition was nonetheless in all the circumstances lawful.

**Interoute Vtesse Ltd (formerly Vtesse Networks Ltd) v Gidman (Valuation Officer) [2020] UKUT 13 (LC) [2020] RA 309 [2020] 4 WLUK 234 (Upper Tribunal (Lands Chamber) 22 April 2020)**

The appellant's national fibre-optic telecommunications network had been correctly valued for the purposes of non-domestic rates by reference to the settled tone of the list for comparable networks underpinned by directly

comparable rental evidence. The appellant's attempt to isolate a value for the fibre-optic network of a competing provider with a much larger and different business, and to use that to value the appellant's network, was contrary to valuation principle and practice and not mandated by EU competition law.

**R. (on the application of Bank Renewables Ltd) v Secretary of State for Business, Energy and Industrial Strategy [2020] EWHC 606 (Admin), [2020] 4 WLR 84 [2020] 3 WLUK 577 (Queen's Bench Division (Administrative Court) 13 March 2020)**

It would rarely be appropriate not to hand down judgment in a public-law case after the conclusion of argument. However, special circumstances made such a course appropriate in the instant case, which concerned the proper allocation of State aid in favour of renewable energy provision in the UK.

**R. (on the application of Simonis) v Arts Council England [2020] EWCA Civ 374 [2021] 1 All ER (Comm) 32, [2020] 3 CMLR 22, [2020] 3 WLUK 201 (Court of Appeal of England and Wales, 13 March 2020)**

The expression "lawful and definitive dispatch" in Regulation 116/2009 art.2(2)(b) was a reference to the national law of the Member State from which an item was physically dispatched. It referred to the legality of the act of dispatch under national law, and it had no autonomous meaning under EU law. In these circumstances the proper authority from which to seek an licence allowing for the export of a painting outside the territory of the European Union was the Italian authorities.