BRICK COURT
CHAMBERS

Brick Court Chambers
7-8 Essex Street, London WC2R 3LD
DX 302 London Chancery Lane

James Wolffe KC

YEAR OF CALL: 1992 **YEAR OF SILK**: 2007

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Practice Overview

James Wolffe KC was formerly Dean of the Faculty of Advocates (the elected leader of the Scottish bar) 2014-16 and Lord Advocate (the senior Scottish Law Officer) 2016-21. As Lord Advocate, he was head of the systems of criminal prosecution and investigation of deaths in Scotland. Before his appointment as Lord Advocate, James had a substantial and wide-ranging public and commercial law practice as a Scottish advocate. He has argued significant cases in the UK Supreme Court including *Miller 1* and *Miller 2* (the "Article 50" and "prorogation" cases).

Commercial

Described in Chambers & Partners' Directory 2013 as "one of the best commercial KCs in Scotland", before his appointment as Lord Advocate in 2016 James Wolffe had a wide-ranging public and commercial law practice in Scotland. He has been instructed in many commercial matters, including building and engineering contracts, commercial property and commercial leases, insurance law, banking, insolvency and professional negligence claims. He has advised frequently on issues of contract interpretation and has experience of dealing with issues of private international law and unjustified enrichment. James Wolffe co-authored the first modern treatment of the law of building contracts in Scotland and in 2015 was invited to give the Scottish Building Contract Committee annual State of the Industry lecture.

Public Law

James Wolffe KC has substantial experience of public law. He has appeared in the UK Supreme Court in some of the most significant constitutional cases of modern times, including *Miller 1* and

Miller 2 (the "Article 50" and "prorogation" cases). He has wide experience of common law grounds of judicial review, of Convention rights and of considering issues of statutory interpretation in a public law context. He has argued many cases concerning the validity of legislation under the devolution settlement. The following is a selection from the significant public law cases which James has argued.

Constitutional cases

R (Miller) v. Prime Minister ; Cherry v. Advocate General for Scotland [2020] AC 373 (the "prorogation case"; whether the prorogation of the UK Parliament in 2019 was lawful)

R (Miller) v. Secretary of State for Exiting the European Union [2018] AC 61 (the "Article 50 case"; whether the UK Government could notify the EU under Article TEU of the UK's decision to withdraw without the authority of an Act of Parliament)

Devolution cases

UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill [2019] AC 1022 (whether the Scottish Continuity Bill, providing for the continuing effect of EU law after withdrawal from the EU, was within the legislative competence of the Scottish Parliament)

Scotch Whisky Association v. Lord Advocate 2018 SC (UKSC) 94 (whether legislation establishing a minimum unit pricing scheme for the sale of alcohol in Scotland was compatible with EU law and within the legislative competence of the Scottish Parliament)

AB v. HM Advocate 2017 SC (UKSC) 101 (whether the "young man's defence" in the Sexual Offences (Scotland) Act 2009 was compatible with Convention rights and within the legislative competence of Scottish Parliament)

Christian Institute v. Lord Advocate 2017 SC (UKSC) 29 (whether legislation establishing a "named person" scheme, with the purpose of promoting the welfare and wellbeing of children, was within the legislative competence of the Scottish Parliament)

Salvesen v. Riddell 2013 SC (UKSC) 236 (whether a provision in an Act of the Scottish Parliament controlling the termination of agricultural tenancies was compatible with Convention rights and within the legislative competence of the Scottish Parliament)

Martin v HM Advocate 2010 SC (UKSC) 40 (whether legislation changing sentencing powers of summary courts was within the legislative competence of the Scottish Parliament in its application to Road Traffic Act offences)

Convention rights

Dean v. Lord Advocate (on behalf of Taiwan) [2017] 1 WLR 2721 (the legal test to be applied under Article 3 ECHR where extradition is resisted on the basis of a risk that the accused will be the target

of violence when imprisoned in the requesting territory)

AB v. HM Advocate 2017 SC (UKSC) 101 (whether the "young man's defence" in the Sexual Offences (Scotland) Act 2009 was compatible with Convention rights and within the legislative competence of Scottish Parliament)

A (Uganda) v. Home Secretary 2016 SC 776 (whether the exclusion of spouses of refugees from a Home Office policy to grant leave to remain to victims of domestic abuse was compatible with Convention rights)

Ross v. Lord Advocate 2016 SC 502 (whether Convention rights required the Lord Advocate to issue guidance on the approach to be taken to prosecution in cases of assisted suicide)

Salvesen v. Riddell 2013 SC (UKSC) 236 (whether a provision in an Act of the Scottish Parliament controlling the termination of agricultural tenancies was compatible with Convention rights and within the legislative competence of the Scottish Parliament)

Ruddy v. Chief Constable of Strathclyde 2013 SC (UKSC) 126, 2014 SC 58 (the leading Scots law authority on the investigative obligations of the state under Article 3 ECHR in respect of alleged police assault)

Kapri v. Lord Advocate (on behalf of the Republic of Albania) [2013] 1 WLR 2324, 2015 JC 30 (the leading authority on the approach to be taken where extradition is resisted on the basis that alleged systemic judicial corruption in the requesting state would result in an unfair trial)

Whyte & Mackay Ltd v. Blyth and Blyth Consulting Engineers Ltd 2013 SLT 555 (whether enforcement of a construction adjudicator's award would be incompatible with Article 1 of the First Protocol)

BH v. Lord Advocate [2013] 1 AC 413 (the leading authority on the relevance of the Article 8 rights of an accused person's children when considering whether the extradition of the accused is compatible with Convention rights)

Burns v. HM Advocate [2009] 1 AC 720 (the effect of investigation in England & Wales on the application of reasonable time requirement of Article 6 ECHR to proceedings in Scotland)

Dundee City Council v. GK 2006 SC 326 (whether the statutory provisions on freeing for adoption in Scotland were compatible with Convention rights)

Karl Construction Ltd v. Palisade Properties plc 2002 SC 270 (whether Scots law on provisional and protective measures was compatible with Convention rights)

Other

Davies v. Care Commission 2013 SC (UKSC) 186 (transfer of statutory functions; interpretation of

transitional provisions; drafting lacuna)

Comhairle nan Eilean Siar v. Scottish Ministers 2013 SC 286, 538 (school closures; principles of statutory interpretation)

KP (Pakistan) v. Home Secretary [2012] CSIH 38, 70 (asylum; whether a Rule of Court introducing the second appeals test for appeals from the Upper Tribunal to the Inner House of the Court of Session was ultra vires)

International/EU

James Wolffe KC has advised on many aspects of EU law, including free movement, State aid, procurement, competition, agricultural subsidies, VAT, criminal justice, health and safety at work, product liability, healthcare, the Charter of Fundamental Rights and *Francovich* damages. He has dealt with challenges to the compatibility with EU law of legislation, both domestic and EU, notably:

Sinclair Collis v. Lord Advocate 2013 SC 221 (whether legislation banning tobacco vending machines was compatible with EU law; for the significance of the analysis of the doctrine of proportionality accepted by the court in this case, see *R (Lumsdon) v. Legal Services Board* [2015] UKSC 41, paras. 75-82)

Scotch Whisky Association v. Lord Advocate 2018 SC (UKSC) 94 (whether legislation establishing a minimum unit pricing scheme for the sale of alcohol in Scotland was compatible with EU law and within the legislative competence of the Scottish Parliament)

Case C-335/13 *Feakins v. Scottish Ministers* (agricultural law; interpretation of Article 18(2) of Commission Regulation (EC) No. 795/2004 establishing the Single Payment Scheme; whether Article 18(2) was compatible with the EU law principle of equal treatment).

APPELLATE ADVOCACY

James Wolffe KC has substantial experience of appellate advocacy in the UK Supreme Court and the Judicial Committee of the Privy Council, as well as in the Scottish civil and criminal appeal courts. Notably, he appeared in *Miller 1* and *Miller 2* (the "Article 50" and "prorogation" cases) and other Supreme Court cases involving significant issues of public law.

UK Supreme Court

R (Miller) v. Prime Minister; Cherry v. Advocate General for Scotland [2020] AC 373 (the "prorogation case"; whether the prorogation of the UK Parliament in 2019 was lawful)

UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill [2019] AC 1022 (whether

the Scottish Continuity Bill, providing for the continuing effect of EU law after withdrawal from the EU, was within the legislative competence of the Scottish Parliament)

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Kapri v. Lord Advocate (on behalf of the Republic of Albania) [2013] 1 WLR 2324, 2015 JC 30 (the leading authority on the approach to be taken where extradition is resisted on the basis of alleged systemic judicial corruption in requesting state)

BH v. Lord Advocate [2013] 1 AC 413 (the leading authority on the relevance of the Article 8 rights of an accused person's children when considering whether the extradition of the accused is compatible with Convention rights)

Cadder v. HM Advocate [2010] 1 WLR 2601 (whether reliance on police interview taken before suspect had been given opportunity to take legal advice compatible with Article 6 ECHR) (appearing with the then Lord Advocate)

Martin v HM Advocate 2010 SC (UKSC) 40 (whether legislation changing sentencing powers of summary courts was within the legislative competence of the Scottish Parliament in its application to Road Traffic Act offences)

Judicial Committee of the Privy Council

Burns v. HM Advocate [2009] 1 AC 720 (the effect of investigation in England & Wales on application of reasonable time requirement of Article 6 ECHR to proceedings in Scotland)

McDonald v. HM Advocate 2010 SC (PC) 1 (disclosure obligations of the prosecution in appeals) (appearing with the then Solicitor General for Scotland)

Kearney v. HM Advocate 2006 SC (PC) 1 (whether trial before a temporary judge was compatible with Article 6 ECHR) (appearing with the then Solicitor General for Scotland)

Arbitration

James Wolffe KC is available for instruction as an arbitrator. He was a member of an ICC Arbitral Tribunal in an arbitration concerning an energy from waste project in which the claim exceeded £100 million (2024). Described in Chambers & Partners' Directory 2013 as "one of the best commercial KCs in Scotland", before his appointment as Lord Advocate in 2016 he had a wide-ranging public and commercial law practice. He was instructed in many commercial matters, including building and engineering contracts, commercial property and commercial leases, insurance law, banking, insolvency, and professional negligence claims against construction professionals, accountants, surveyors and solicitors. He regularly advised on issues of contract interpretation. He co-authored the first modern treatment of the law of building contracts in Scotland and in 2015 was invited to give the Scottish Building Contract Committee annual State of the Industry lecture.

Education and qualifications

Advocate and KC, Scotland

Barrister, England & Wales

Professional affiliations

Judge of the Court of Appeal of Jersey (2022)

Bencher, Middle Temple

Honorary Bencher, The King's Inns, Dublin

Academic qualifications

LLB (First Class), Edinburgh University

BCL (First Class), Balliol College, Oxford

DipLP, Edinburgh University

Fellowships and awards

Honorary LLD, Glasgow University

Fellow of the Royal Society of Edinburgh

Fellow of the Society of Antiquaries of Scotland

Fellow of the European Law Institute

Honorary Fellow of the Royal Incorporation of Architects in Scotland

Publications and lectures

"Devolution and the Statute Book" (2021) 42 Statute Law Review 121 (the 2020 Renton Lecture of the Statute Law Society)

"Tackling Transnational Crime: A Scottish Perspective" 2018 NJECL 183 (a lecture given in Brussels, 29 January 2018)

"A Constitutional Trust" 2018 SCOLAG 92 (the 2017 James Wood Lecture, Glasgow University)

"Some Property Problems in Building Contracts" (with SPL Wolffe), in Steven et al (eds), Nothing so Practical as a Good Theory; Festschrift for George Gretton, 2017

"Miller and Scotland: the Importance of the Legislative Consent Convention in the Devolution Settlement" (2017) 8 UK Supreme Court Year Book

"The Proposed Common European Sales Law: Scope and Choice of Law" in Alpa et al (eds), The Common European Sales Law – the Lawyers' View, 2013

Contributor, Macfadyen, Court of Session Practice, 2006 (chapters on interim payment of damages, interim diligence and summary decree)

"Enrichment by Improvements" in Johnston & Zimmermann, Unjustified Enrichment: Key Issues in Comparative Perspective, 2002

Contributor, Gloag & Henderson, The Law of Scotland, 11th edn, 2001 (chapters on rights in security, diligence and insolvency)

"The Scope of Judicial Review in Scots Law" 1992 PL 625

"Crown and Prerogative in Scots Law" in Finnie et al (eds), Edinburgh Essays in Public Law, 1991

"Building Contracts" (with JM Arnott), Stair Memorial Encyclopaedia on the Laws of Scotland, Vol.

Selected lectures

"Law, Democracy and Fundamental Rights", The Chancellor's Lecture, Napier Edinburgh University, 29 November 2017

"Prosecution in the Public Interest", The Apex Lecture 2017, Edinburgh; https://www.apexscotland.org.uk/wp-content/uploads/2014/07/apex_annual_lecture_2017.pdf

"Fundamental Rights and the Prosecution of Crime", the JUSTICE Human Rights Day Lecture 2016; http://www.advocates.org.uk/media/2280/lajusticelecture.pdf

"The Principle of Legality and the Rule of Law", The Attorney General's Constitutional Law Summer School, Belfast, 10 August 2016

"Civil Justice in the 21st Century", Axiom Advocates Seminar, Edinburgh 22 September 2015

"Prosecute or Protect? Article 31 of the 1951 Refugee Convention and the Criminal Justice System in Scotland", Keynote Address, Scottish Refugee Council/Faculty of Advocates Conference, Glasgow, 21 May 2015

"Principles and Pragmatism in Building Contracts", Scottish Building Contract Committee Annual State of the Industry Lecture 2015, Edinburgh, 10 March 2015

"State aid in the Courts", Faculty of Advocates/UK State Aid Law Association Seminar, Edinburgh, 2 February 2015

"Economic and Social Rights in Scotland: Lessons from the Past; Options for the Future", A lecture for International Human Rights Day 2014, under the auspices of the Scottish Human Rights Commission and the Global Justice Academy, Edinburgh University http://www.scottishhumanrights.com/media/1469/wolffe2014lecture.pdf

"The Twenty First Century Bar: What is it for?" Inaugural Decanal Lecture, Edinburgh, 7 May 2014

Directory quotes

“He is an authoritative voice in court”; “Sets out his views in a very client-friendly way”; “He has a first-class legal brain”; “Experienced in construction cases, including contractual disputes and professional negligence matters” (Legal 500, 2016)

‘A seasoned silk … James Wolffe KC is very highly regarded for his in-depth knowledge of the law. He regularly represents business clients and public bodies in the highest courts, including the UK Supreme Court, the ECJ and the ECHR.

Strengths: "His legal analysis is always first-class; he is a very clear thinker and good at distilling difficult points into a client-friendly narrative." "Outstanding in terms of intellect but combines that with a pragmatic approach. He's also very user-friendly - he will move heaven and earth to find you time. He is very willing to help."’ (Chambers, 2015)

‘James Wolffe KC receives plaudits for his handling of both commercial and non-commercial public law cases. “He has great analytical ability”. “He is very good to work with, knowledgeable, diligent and clients like his approach”.’ (Chambers, 2014)

‘… significant experience in both administrative and public law and commercial disputes, “His presentation is clear, concise and very well respected by the judges. He always has an excellent grasp of the legal concepts and facts involved in the case”.’ (Chambers, 2014)

“One of the most able advocates of his generation”; “A formidable advocate held in high esteem by all”; “Totally reliable and thorough, with a superb mind” (Legal 500, 2014)

‘James Wolffe is “very highly regarded for his court performance” as well as his academic ability, so much so that commentators hail him as “one of the best commercial KCs in Scotland”. His expertise crosses both public and commercial law.’ (Chambers, 2013)

‘James Wolffe is praised as “an exceptionally able and hard-working advocate, possessed of acute insight and sound judgment”, He acts for and against government at all levels.’ (Chambers, 2013)