



LAW IN POLITICS, POLITICS IN LAW

Edited by
David Feldman



HART STUDIES IN CONSTITUTIONAL LAW

B L O O M S B U R Y

Law in Politics, Politics in Law

Edited by
David Feldman



• H A R T •
PUBLISHING

OXFORD AND PORTLAND, OREGON

2015

Published in the United Kingdom by Hart Publishing Ltd
16C Worcester Place, Oxford, OX1 2JW
Telephone: +44 (0)1865 517530
Fax: +44 (0)1865 510710
E-mail: mail@hartpub.co.uk
Website: <http://www.hartpub.co.uk>

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA
Tel: +1 503 287 3093 or toll-free: (1) 800 944 6190
Fax: +1 503 280 8832
E-mail: orders@isbs.com
Website: <http://www.isbs.com>

© The editor and contributors severally 2015
First published in hardback 2013

The editor and contributors have asserted their right under the Copyright, Designs and Patents Act 1988,
to be identified as the authors of this work.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted,
in any form or by any means, without the prior permission of Hart Publishing, or as expressly permitted by
law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning
reproduction which may not be covered by the above should be addressed to Hart Publishing Ltd at the
address above.

British Library Cataloguing in Publication Data
Data Available

ISBN: 978-1-84946-990-6

Typeset by Hope Services, Abingdon
Printed and bound in Great Britain by
CPI Group (UK) Ltd, Croydon CR0 4YY

LAW IN POLITICS, POLITICS IN LAW

A great deal has been written on the relationship between politics and law. Legislation, as a source of law, is often highly political, and is the product of a process or the creation of officials often closely bound into party politics. Legislation is also one of the exclusive powers of the state. As such, legislation is plainly both practical and inevitably political; at the same time most understandings of the relationship between law and politics have been overwhelmingly theoretical. In this light, public law is often seen as part of the political order or as inescapably partisan. We know relatively little about the real impact of law on politicians through their legal advisers and civil servants. How do lawyers in government see their roles and what use do they make of law? How does politics actually affect the drafting of legislation or the making of policy?

This volume will begin to answer these and other questions about the practical, day-to-day relationship between law and politics in a number of settings. It includes chapters by former departmental legal advisers, drafters of legislation, law reformers, judges and academics, who focus on what actually happens when law meets politics in government.

Volume 3 in the series Hart Studies in Constitutional Law

Hart Studies in Constitutional Law

Volume 1 The House of Lords 1911–2011: A Century of Non-Reform
Chris Ballinger

Volume 2 Parliament and the Law
Edited by Alexander Horne, Gavin Drewry and Dawn Oliver

Volume 3 Law in Politics, Politics in Law
Edited by David Feldman

Volume 4 Parliamentary Sovereignty in the UK Constitution
Michael Gordon

Preface

This volume is largely based on papers presented at two events in 2011. One was the Annual Conference of the Society of Legal Scholars (SLS), the learned society of university lawyers in the United Kingdom and Ireland, which took place at Downing College and the Faculty of Law, University of Cambridge, from 5th to 8th September 2011. A distinguished collection of speakers discussed their experiences as lawyers in and around politics and the civil service. Professor Elizabeth Cooke, Sir Ross Cranston, David Howarth, Sir Stephen Laws, Professor Hector MacQueen, Matthew Parish and Sir Philip Sales subsequently revised their presentations or prepared new material for this collection. The other event was a seminar marking the centenary of the Parliament Act 1911, which was organised for the University of Cambridge Centre for Public Law (CPL) and held at the Canary Wharf offices of Clifford Chance LLP, generous and long-standing supporters of the CPL, on 22nd November 2011. Of the eminent participants, Dr Chris Ballinger, Daniel Greenberg, Professor Lord Norton of Louth, Professor Dawn Oliver and Dr Rhodri Walters kindly wrote up their presentations or offered new work to afford readers of this volume a range of perspectives on the interaction of law and politics in the planning, enactment and implementation of the 1911 Act and its amending Act of 1949, a case-study of the relationships between law and politics. Three speakers, the Right Hon Theresa Villiers MP, Professor Vernon Bogdanor and Professor Rodney Brazier, kindly took part in the conference or the seminar and greatly enhanced the discussion, but were unable to contribute to this volume. I am grateful to all of them for the illumination they offered, and am particularly indebted to the authors for translating their presentations into the form in which they appear here and for their patience and flexibility in responding to editorial demands.

The authors of two chapters did not take part in those events. Matthew Windsor arrived serendipitously in Cambridge in 2012 to undertake research on legal ethics in relation to lawyers advising governments on international law, and generously allowed himself to be persuaded to add the writing of a chapter on legal ethics to the other, more pressing demands on his time. The late Alan Rodger, Lord Rodger of Earlsferry, in a way laid the groundwork for this book by opening my eyes to aspects of its subject in his Presidential Address to the Holdsworth Club in the University of Birmingham in 1998. Then and subsequently, he showed me great professional and personal consideration and kindness. In 2009 we discussed the plans for the 2011 SLS Annual Conference and the possibility of a book such as this, and he delighted me by agreeing in principle to allow his 1998 Presidential Address to be included in any collection which might emerge from the Conference. His death in June 2011 deprived the legal world of a great gentleman, a fine lawyer and legal historian, an elegant, entertaining speaker and writer, and a delightful, inspiring companion.

Two chapters, or versions of them, are published elsewhere. I am grateful to the following for permission to use material in this book:

Dr Christine Rodger, the Holdsworth Club of the University of Birmingham and its Vice-President, Mr George Applebey, Dr Ludwig Burgmann and Löwenklau Gesellschaft

eV, Frankfurt am Main, for chapter four, 'The Form and Language of Legislation' by Lord Rodger of Earlsferry, previously published by the Holdsworth Club (Birmingham, 1998), and, in a revised and updated version, in (1999) 19 *Rechtshistorisches Journal*, 601–35;

Mr Nicolas Besly, Editor of *The Table: The Journal of the Society of Clerks at the Table of Commonwealth Parliaments*, and the Society of Clerks-at-the-Table in Commonwealth Parliaments, for chapter thirteen, 'The Impact of the Parliament Acts 1911 and 1949 on a Government's Management of its Legislative Timetable, on Parliamentary Procedure and on Legislative Drafting', published in *The Table*, vd 80, 201: pp 11–16.

Many people have developed my own interest in the relationship between politics and law over 40-odd years. I owe special debts to Dr Stephen Cretney, my tutor, ex-colleague and friend, and to Professor Richard Hodder-Williams and Dr Hugh Rawlings, sometime colleagues in the University of Bristol, who organised an annual Law & Politics Colloquium in the 1970s and 1980s.

Finally, I acknowledge my gratitude and sense of obligation to several other people and organisations for making this book possible. The SLS honoured me by electing me as its President for 2010–11, allowing me to place law and politics at the heart of its Annual Conference in 2011. Professor John Bell, Director of the CPL, played a major part in organising the seminar on the Parliament Act 1911, and offered his customarily erudite and wholehearted support to the project. Mrs Felicity Eves-Rey, of the University of Cambridge Faculty of Law, provided valuable administrative backing and keen organisational skills for the Conference, seminar and book. I benefited from Richard Hart's encouragement of this project as I have for projects for more than a quarter of a century. For Hart Publishing, the perceptive copy-editor, Victoria Broom, ensured that many errors could be corrected and ambiguities resolved. It has been a pleasure to work with Rachel Turner, Mel Hamill and Tom Adams, whose efficiency and patience ensured that the various papers were smoothly moulded into a book at a particularly busy time for any academic publisher. And at home, Jill continued to tolerate me and my preoccupations and make everything seem worthwhile, as she has for 30 years.

David Feldman
Comberton, 29th August 2013

Preface to Paperback Edition

In the two years since the hardback edition of this collection of essays went to press, law and politics in the UK have not stood still. A referendum on independence for Scotland, conducted in Scotland in September 2014, produced a safe majority for maintaining the union between Scotland and the rest of the United Kingdom; but in the days before the referendum, the Government of the United Kingdom, fearing a majority the other way, promised that Parliament would be invited to devolve significant additional powers to Scotland in the event of independence being rejected. This led to a range of perhaps unanticipated complications concerning the relationship between the United Kingdom's constituent elements, generating wide-ranging reconsideration of the Unions and devolution which could substantially alter the character and constitution of the state. Then in a national General Election in May 2015 the Conservative Party secured a small majority of seats in the House of Commons and was able to form a Government without its former Coalition partners, the Liberal Democrats, who saw the number of their seats drop dramatically. At the same time, however, the Conservative Party was virtually wiped out in Scottish constituencies, where the Scottish National Party came close to a clean sweep of Westminster seats. The new United Kingdom Government, in accordance with its manifesto commitments, is attempting to renegotiate the United Kingdom's place in the EU prior to a referendum to be held within two years on continued membership of the EU; it is preparing legislation to replace the Human Rights Act 1998 and hoping to weaken or sever the link between the United Kingdom and the Council of Europe, including the mechanisms of the European Convention on Human Rights; and it is embarking on quite major reforms of devolution. Meanwhile the defeated Labour Party and Liberal Democrats have begun a period of self-examination and more or less bruising leadership elections.

The relationship between politics and law, self-evident in these fields, is as fascinating as ever. Yet these developments do not seem to me to have called into question either the themes or the detailed analyses and arguments which our authors offered in the hardback edition, so embarking on substantial revisions would serve no useful purpose. The original text is therefore reproduced without amendment in this paperback edition.

Nevertheless, developments relating to the campaign for an independent Scotland prompt especially interesting reflections in relation to Professor Dawn Oliver's discussion, in chapter 16 of this book, of 'constitutional moments', particularly in respect of her discussion of devolution to Scotland and Wales at pages 244 to 246 below. I am grateful to Professor Oliver for preparing the following further thoughts, to be read in conjunction with that passage, and also to the publishers, Hart Publishing, and its Production Manager, Tom Adams, for allowing them to be included here.

David Feldman

Comberton, 19th September 2015

* * *

Reflections on Scottish Devolution

Dawn Oliver

The referendum on Scottish independence in September 2014 crystallised and created 'constitutional moments' for the SNP, the Labour party, the House of Commons and the electorate. These reflected changes in public opinion and in senses of national identity, and were close to Ackerman's concept of transformative moments.

Nicola Sturgeon of the SNP was the charismatic champion for independence in Scotland. The leader of the 'no' campaign, its champion, Alistair Darling, lacked Sturgeon's level of charisma. Although the SNP 'lost' the independence referendum, this was by a surprisingly narrow margin. The unanticipatedly high level of electoral support for independence (45%) was transformative for the Scottish electorate and buttressed the political influence of the SNP. The shifts in public opinion and national identity in Scotland were reflected in turn in the result of the UK General Election 2015, in which the SNP won all but one of the Scottish seats in the House of Commons. This result increased the political and public pressures on the British government and Parliament for reform of Scotland's governance, and reinforced the 'moments'.

Second, Labour's loss of support in Scotland and its poor electoral performance across the UK in the 2015 election reflected loss of confidence among the electorate in Labour's economic competence. It also reflected a loss of confidence among many who could be Labour supporters in the style of British politics and established politicians generally and the widespread acceptance of policies of austerity after the financial crisis of 2008–09. The Labour leader lacked the charisma of a 'Champion', someone who could impart sufficient momentum to the party's policies to overcome obstacles to their implementation (see page 241, below). This turmoil in the aftermath of the general election created a constitutional moment for the Labour party, leading to questioning of its role and policies. In September 2015 a new party leader, Jeremy Corbyn MP, was elected: he stood apart from the mainstream in the party, including Labour's front bench, standing for a new style of politics and new anti-austerity policies. His approach mobilised discontent about Labour's recent stand on policy and politics: the election was the result of widespread participation of Labour supporters in the process. To his supporters Corbyn was a charismatic Champion for their interests. As of September 2015 the outcomes of these moments for Labour, whether the policies to be developed by Labour will be sufficiently well prepared to be workable, whether they will 'fit' the constitutional system and whether they will command sufficient electoral support for Labour to be in a position to form a government remain uncertain. And thirdly, the rise of Scottish nationalism and support for the SNP have stimulated demands in England for 'English votes for English laws' as an answer to the West Lothian Question: proposals to secure that MPs sitting for English or English and Welsh constituencies in the House of Commons have stronger voices in the legislative process where proposals in bills do not apply to Scotland. As of September 2015 this issue has not been resolved. Whether the creation of classes of MPs, some not entitled to vote on certain measures, would 'fit' the system, and thus whether it would be stable, remains to be seen.

List of Authors

Dr Chris Ballinger is the Academic Dean and an Official Fellow of Exeter College, Oxford.

Elizabeth Cooke, Professor of Law in the University of Reading, is a Principal Judge of the First-Tier Tribunal (assigned to the Property Chamber) and a Deputy Judge of the Upper Tribunal (assigned to the Tax and Chancery Chamber). She was previously a member of the Law Commission.

Sir Ross Cranston, FBA, is a Judge of the High Court of Justice of England and Wales, and was previously a Labour MP for Dudley North, Solicitor General, and a professor of law.

David Feldman, QC (Hon), FBA, is the Rouse Ball Professor of English Law in the University of Cambridge and a Fellow of Downing College, Cambridge, and was previously Legal Adviser to the Joint Committee on Human Rights in the UK Houses of Parliament.

Daniel Greenberg is Parliamentary Counsel, Berwin Leighton Paisner LLP; Editor of *Craies on Legislation*; and Visiting Professor of Legislation in the University of Derby.

David Howarth is a Reader in Private Law in the University of Cambridge, a Fellow of Clare College, Cambridge, and former Liberal Democrat leader of Cambridge City Council and MP for Cambridge.

Sir Stephen Laws, KCB, QC (Hon), now retired, was previously First Parliamentary Counsel.

Hector MacQueen, FBA, FRSE, is Professor of Private Law in the University of Edinburgh and a member of the Scottish Law Commission.

Philip Norton, Lord Norton of Louth, is Professor of Politics at the University of Hull and takes the Conservative whip in the House of Lords.

Dawn Oliver, QC (Hon), FBA, is Emeritus Professor of Constitutional Law at University College, London.

Matthew Parish is a partner with the law firm Holman Fenwick Willan in Geneva, and was previously legal counsel to the World Bank and, from 2005 to 2007, the Chief Legal Adviser to the International Supervisor of Brčko.

The late Alan Rodger, Lord Rodger of Earlsferry (1944–2011) was Solicitor General for Scotland and Lord Advocate (Conservative), Lord Justice General and Lord President of the Court of Session in Scotland, a Lord of Appeal in Ordinary, and a Justice of the Supreme Court of the United Kingdom.

Sir Philip Sales is a Lord Justice of Appeal of the Court of Appeal of England and Wales.

David Seymour, now retired, was the Legal Adviser to the UK Government's Home Office.

Dr Rhodri Walters, now retired, was Reading Clerk in the House of Lords in the UK Parliament.

Matthew Windsor is a PhD candidate in the Faculty of Law, University of Cambridge, and a WM Tapp Scholar at Gonville and Caius College, Cambridge.

Sir Michael Wood is a barrister in private practice at 20 Essex Court, London, and was previously the Legal Adviser to the UK Government's Foreign and Commonwealth Office.

Table of Cases

INTERNATIONAL

International Arbitration

Case concerning the location of boundary markers in Taba between Egypt and Israel, Decision of 29 September 1988, Reports of International Arbitration Awards, XX, pp 1–118, UN, 2006.....	213
--	-----

International Centre for Settlement of Investment Disputes (ICSID)

Kardassopoulos v Georgia, Decision on Jurisdiction, ICSID Case No ARB/05/18	209
Loewen v United States, ICSID Case No ARB(AF)/98/3	211
Siemens v Argentina, Award, ICSID Case No ARB/02/8.....	209

International Court of Justice (ICJ)

Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo, Order of 17 October 2008, ICJ Reports 2008, p 409	113
---	-----

International Criminal Court (ICC)

Katanga-Chui May 2013 (ICC)	209
Thomas Lubanga Dyilo March 2013 (ICC).....	209

UN Commission on International Trade Law (UNCITRAL)

CME v Czech Republic, Partial Award 13 September 2001	209
---	-----

EUROPEAN

European Court of Human Rights

A v United Kingdom (35373/97) (2003) 36 EHRR 51, 13 BHRC 623	225
A v United Kingdom (8139/09) (2012) ECHR 56.....	253
A, B, C v Ireland (25579/05) [2011] 3 FCR 244, (2011) 53 EHRR 13, 29 BHRC 423.....	222, 231
Aksu v Turkey (4149/04) (2013) 56 EHRR 4, [2012] Eq LR 970.....	230–32
Al-Fayed v United Kingdom (17101/90) (1994) 18 EHRR 393.....	236
Alatulkkila v Finland (33538/96) (2006) 43 EHRR 34.....	234, 236

Animal Defenders International v United Kingdom (48876/08) (2013) 57 EHRR 21, 34 BHRC 137, (2013) 163(7564) NLJ 20 229, 230	
Ashingdane v United Kingdom (A/93) (1985) 7 EHRR 528	236
Barabkevich v Russia (10519/03) (2008) 47 EHRR 8	222
Bayatyan v Armenia (23459/03) (2012) 54 EHRR 15, 32 BHRC 290	231
Belgian Linguistics Case (No 2) (A/6) (1979-80) 1 EHRR 252	227
Bladet Tromsø v Norway (21980/93) (2000) 29 EHRR 125, 6 BHRC 599	225
Botta v Italy (21439/93) (1998) 26 EHRR 241, 4 BHRC 81, (1999) 2 CCL Rep 53, [1998] HRC 302	226
Boulois v Luxembourg (37575/04) (2012) 55 EHRR 32	235
Bryan v United Kingdom (A/335-A) (1995) 21 EHRR 342, [1996] 1 PLR 47, [1996] 2 EGLR 123, [1996] 28 EG 137	234-37
Burden v United Kingdom (13378/05) [2008] STC 1305, [2008] 2 FLR 787, [2008] 2 FCR 244, (2008) 47 EHRR 38, 24 BHRC 709, [2008] BTC 8099, 10 ITL Rep 772, [2008] WTLR 1129, [2008] Fam Law 628, [2008] 18 EG 126 (CS), (2008) 158 NLJ 672	228
Capital Bank AD v Bulgaria (49429/99) (2007) 44 EHRR 48	234
Chapman v United Kingdom (27238/95) (2001) 33 EHRR 18, 10 BHRC 48	220
Colon v Netherlands (49458/06) (2012) 55 EHRR SE5	225
Demir v Turkey (34503/97) [2009] IRLR 766, (2009) 48 EHRR 54	231
DH v Czech Republic (57325/00) (2008) 47 EHRR 3, 23 BHRC 526, [2008] ELR 17	227
Dickson v United Kingdom (44362/04) [2008] 1 FLR 1315, [2007] 3 FCR 877, (2008) 46 EHRR 41, 24 BHRC 19, [2008] Prison LR 334, [2008] Fam Law 211, (2007) 157 NLJ 1766	230, 231
Draon v France (1513/03) [2005] 3 FCR 409, (2006) 42 EHRR 40, 20 BHRC 456	226, 229, 230
E v Norway (A/181-A) (1994) 17 EHRR 30	236
EB v France (43546/02) [2008] 1 FLR 850, [2008] 1 FCR 235, (2008) 47 EHRR 21, 23 BHRC 741, [2008] Fam Law 393	227
Evans v United Kingdom (6339/05) [2007] 1 FLR 1990, [2007] 2 FCR 5, (2008) 46 EHRR 34, 22 BHRC 190, (2007) 95 BMLR 107, [2007] Fam Law 588, (2007) 157 NLJ 599	226, 229, 231
Ferrazzini v Italy (44759/98) [2001] STC 1314, (2002) 34 EHRR 45, [2003] BTC 157, 3 ITL Rep 918, [2001] STI 1224	233
Friend v United Kingdom (16072/06) (2010) 50 EHRR SE6	225, 230
Genovese v Malta (53124/09) [2012] 1 FLR 10, [2011] Eq LR 1282, [2012] Fam Law 20	231
Giacomelli v Italy (59909/00) (2007) 45 EHRR 38	226
Golder v United Kingdom (A/18) (1979-80) 1 EHRR 524	235
Goodwin v United Kingdom (17488/90) (1996) 22 EHRR 123, 1 BHRC 81	225
Goodwin v United Kingdom (28957/95) [2002] IRLR 664, [2002] 2 FLR 487, [2002] 2 FCR 577, (2002) 35 EHRR 18, 13 BHRC 120, (2002) 67 BMLR 199, [2002] Fam Law 738, (2002) 152 NLJ 1171	226, 230, 231
Grande Oriente d'Italia di Palazzo Giustiniani v Italy (35972/97) (2002) 34 EHRR 22	225
Greens and MT v United Kingdom (60041/08) (2011) 53 EHRR 21, [2010] 2 Prison LR 22, (2010) 160 NLJ 1685	230

HADEP v Turkey (28003/03) (2013) 56 EHRR 5.....	225
Handyside v United Kingdom (A/24) (1979-80) 1 EHRR 737.....	260
Hatton v United Kingdom (36022/97) (2003) 37 EHRR 28, 15 BHRC 259.....	224, 226, 229–31
Hirst v United Kingdom (Admissibility) (74025/01) (2003) 37 EHRR CD176	233
Hirst v United Kingdom (No 2) (2006) 42 EHRR 41, 19 BHRC 546, [2006] 1 Prison LR 220, (2005) 155 NLJ 1551	24, 222, 225, 230, 247, 253
Hizb Ut-Tahrir v Germany (31098/08) (2012) 55 EHRR SE12.....	225
HL v United Kingdom (45508/99) (2005) 40 EHRR 32, 17 BHRC 418, (2004) 7 CCL Rep 498, [2005] Lloyd's Rep Med 169, (2005) 81 BMLR 131, [2004] MHLR 236.....	236
Iatridis v Greece (31107/96) (2000) 30 EHRR 97	224
Ignaccolo-Zenide v Romania (31679/96) (2001) 31 EHRR 7	231
Ireland v United Kingdom (A/25) (5310/71) (1979-80) 2 EHRR 25	136
James v United Kingdom (A/98) (1986) 8 EHRR 123, [1986] RVR 139.....	231
Kart v Turkey (8917/05) (2010) 51 EHRR 40, 28 BHRC 96	225
Kingsley v United Kingdom (35605/97) (2002) 35 EHRR 10	234
Kiyutin v Russia (2700/10) (2011) 53 EHRR 26, [2011] Eq LR 530.....	231
Kjeldsen v Denmark (A/23) (1979-80) 1 EHRR 711	224
Kozak v Poland (13102/02) (2010) 51 EHRR 16, 29 BHRC 48	227
Ladbroke v Sweden (27968/05) (2008) 47 EHRR SE10.....	235
Lautsi v Italy (30814/06) (2012) 54 EHRR 3, 30 BHRC 429, [2011] Eq LR 633, [2011] ELR 176	222
Lindheim v Norway (13221/08) judgment of 12 June 2012.....	230
Lithgow v United Kingdom (A/102) (1986) 8 EHRR 329	227
Maaouia v France (39652/98) (2001) 33 EHRR 42, 9 BHRC 205	233
Marckx v Belgium (A/31) (1979-80) 2 EHRR 330.....	231
Menotti v Italy (33804/96) (2002) 34 EHRR 48.....	234
Müller v Switzerland (A/133) (1991) 13 EHRR 212	232
National & Provincial Building Society v United Kingdom (21319/93) [1997] STC 1466, (1998) 25 EHRR 127, 69 TC 540, [1997] BTC 624, [1998] HRCd 34	228
National Federation of Self-Employed v United Kingdom (7995/77) 15 DR 198.....	228
Nilsen and Johnsen v Norway (2000) 30 EHRR 878.....	225
Novoseletskiy v Ukraine (47148/99) (2006) 43 EHRR 53	226
Odievre v France (42326/98) [2003] 1 FCR 621, (2004) 38 EHRR 43, 14 BHRC 526.....	230, 231
Osman v United Kingdom (23452/94) [1999] 1 FLR 193, (2000) 29 EHRR 245, 5 BHRC 293, (1999) 1 LGLR 431, (1999) 11 Admin LR 200, [2000] Inquest LR 101, [1999] Crim LR 82, [1998] HRCd 966, [1999] Fam Law 86, (1999) 163 JPN 297	226
Özgülür Gündem v Turkey (23144/93) (2001) 31 EHRR 49	226
Petrovic v Austria (20458/92) (2001) 33 EHRR 14, 4 BHRC 232, [1998] HRCd 366	231
Ramsahai v Netherlands (52391/99) (2008) 46 EHRR 43, [2007] Inquest LR 103, [2007] Po LR 46	233
Rasmussen v Denmark (A/87) (1985) 7 EHRR 371.....	231
Rees v United Kingdom (A/106) [1987] 2 FLR 111, [1993] 2 FCR 49, (1987) 9 EHRR 56, [1987] Fam Law 157.....	226

Refah Partisi (Welfare Party) v Turkey (No 2) (41340/98) (2003) 37 EHRR 1, 14 BHRC 1.....	225
Ringeisen v Austria (No 1) (A/13) (1979-80) 1 EHRR 455	234
Sadak v Turkey (25144/94) (2003) 36 EHRR 23	224
Salesi v Italy (A/257-E) (1998) 26 EHRR 187.....	234
Santoro v Italy (36681/97) (2006) 42 EHRR 38	222
Schalk and Kopf v Austria (30141/04) [2011] 2 FCR 650, (2011) 53 EHRR 20, 29 BHRC 396, [2010] Eq LR 194.....	229
Scoppola v Italy (No 3) (126/05) [2013] 1 Costs LO 62, (2013) 56 EHRR 19, 33 BHRC 126.....	222
Sentges v Netherlands (Admissibility) (27677/02) (2004) 7 CCL Rep 400.....	226
Sevinger and Eman v Netherlands (Admissibility) (17173/07) (2008) 46 EHRR SE14.....	222
Sheffield and Horsham v United Kingdom (22985/93) [1998] 2 FLR 928, [1998] 3 FCR 141, (1999) 27 EHRR 163, 5 BHRC 83, [1998] HRCd 758, [1998] Fam Law 731	225
Smith and Grady v United Kingdom (33985/96) [1999] IRLR 734, (2000) 29 EHRR 493, (1999) 11 Admin LR 879.....	222
Stec v United Kingdom (Admissibility) (65731/01) (2005) 41 EHRR SE18.....	234
Stec v United Kingdom (65731/01) (2006) 43 EHRR 47, 20 BHRC 348	227, 228
Stere v Romania (25632/02) (2007) 45 EHRR 6, 8 ITL Rep 636	224
Stubing v Germany (43547/08) [2013] 1 FCR 107, (2012) 55 EHRR 24, 33 BHRC 440.....	222, 225, 230
Sukhovetsky v Ukraine (13716/02) (2007) 44 EHRR 57	225, 230
Sunday Times v United Kingdom (A/30) (1979-80) 2 EHRR 245, (1979) 76 LSG 328	225
Tatar and Faber v Hungary (26005/08 & 26160/08) judgment, 12 June 2012.....	225
Tillack v Belgium (20477/05) (2012) 55 EHRR 25	225
Tsfayo v United Kingdom (60860/00) (2009) 48 EHRR 18, [2007] HLR 19, [2007] BLGR 1	234, 235
Tyrer v United Kingdom (A/26) (1979-80) 2 EHRR 1.....	220, 231
Ukraine-Tyumen v Ukraine (22603/02) 22 November 2007.....	224
Van de Heijden v Netherlands (42857/05) 3 April 2012	222, 231
Vo v France (53924/00) [2004] 2 FCR 577, (2005) 40 EHRR 12, 17 BHRC 1, (2004) 79 BMLR 71, [2005] Inquest LR 129	231
W v United Kingdom (A/121) (1988) 10 EHRR 29.....	226
Wessels-Bergervoet v Netherlands (34462/97) (2004) 38 EHRR 37	227
Zdanoka v Latvia (58278/00) (2007) 45 EHRR 17.....	222, 225

European Court of Justice

Akzo Nobel Ltd and Akros Chemicals Ltd v European Commission (C-550/07 P) [2011] 2 AC 338, [2011] 3 WLR 755, [2011] All ER (EC) 1107, [2011] Bus LR 1458, [2010] ECR I-8301, [2010] 5 CMLR 19, [2011] CEC 253, (2010) 160 NLJ 1300.....	131
AM&S Europe Ltd v Commission (155/79) [1983] QB 878, [1983] 3 WLR 17, [1983] 1 All ER 705, [1982] ECR 1575, [1982] 2 CMLR 264, [1982] FSR 474, (1983) 127 SJ 410	131

Marks & Spencer Plc v Customs and Excise Commissioners (C-309/06) [2008] STC 1408, [2008] ECR I-2283, [2008] 2 CMLR 42, [2009] CEC 358, [2008] BTC 5457, [2008] BVC 577, [2008] STI 1194.....	98
Prezes Urzedu Komunikacji Elektronicznej and Poland v European Commission (C-422/11 P & C-423/11) [2012] OJ C355/7	131

DOMESTIC

Australia

Attorney-General (NT) v Kearney (1985) 158 CLR 500.....	131
Australian Capital Television Pty Ltd v Commonwealth (1988) 165 CLR 360	32
Australian Communist Party v Commonwealth (1951) 83 CLR 1	31
Australian National Airways Pty Ltd v Commonwealth (1945) 71 CLR 29	31
Breen v Williams (1996) 186 CLR 71	32, 33
Commonwealth v Bank of New South Wales (1949) 79 CLR 497 (PC)	31
Mabo v Queensland (1992) 175 CLR 1.....	32
Philip Morris Ltd v Prime Minister [2011] AATA 556.....	131
SCI Operations Pty Ltd v Commonwealth of Australia (1996) 139 ALR 595	135
Waterford v Commonwealth (1987) 163 CLR 54	131

New Zealand

Solicitor-General v Miss Alice [2007] 2 NZLR 783 (HC).....	135
--	-----

United Kingdom

A v Secretary of State for the Home Department (Belmarsh case) [2005] UKHL 71, [2006] 2 AC 221, [2005] 3 WLR 1249, [2006] 1 All ER 575, [2006] HRLR6, [2006] UKHRR 225, 19 BHRC 441, (2005) 155 NLJ 1924	37, 38, 136
Al Rawi v Security Service (Liberty intervening) [2011] UKSC 34, [2012] 1 AC 531, [2011] 3 WLR 388, [2012] 1 All ER 1, [2011] UKHRR 931, (2011) 108(30) LSG 23, (2011) 155(28) SJLB 31	107
Alfred Crompton Amusement Machines Ltd v Customs & Excise Commissioners (No 2) [1972] 2 QB 102, [1972] 2 WLR 835, [1972] 2 All ER 353, (1972) 116 SJ 198 (CA (Civ Div))	130
Ali v Birmingham City Council [2010] UKSC 8, [2010] AC 39, [2010] 2 WLR 471, [2010] 2 All ER 175, [2010] PTSR 524, [2010] HRLR 18, [2010] UKHRR 417, [2010] HLR 22, [2010] BLGR 401, (2010) 154(7) SJLB 37.....	235
Associated Provincial Picture Houses Ltd v Wednesbury Corp [1948] 1 KB 223, [1947] 2 All ER 680, (1947) 63 TLR 623, (1948) 112 JP 55, 45 LGR 635, [1948] LJR 190, (1947) 177 LT 641, (1948) 92 SJ 26.....	236
AXA General Insurance Ltd v HM Advocate [2011] UKSC 46, [2012] 1 AC 868, [2011] 3 WLR 871, 2012 SC (UKSC) 122, 2011 SLT 1061, [2012] HRLR 3, [2011] UKHRR 1221, (2011) 122 BMLR 149, (2011) 108(41) LSG 22.....	229

Begum v Tower Hamlets LBC [2003] UKHL 5, [2003] 2 AC 430, [2003] 2 WLR 388, [2003] 1 All ER 731, [2003] HRLR 16, [2003] UKHRR 419, 14 BHRC 400, [2003] HLR 32, [2003] BLGR 205, 2003 Hous LR 20, [2003] ACD 41, (2003) 100(13) LSG 28, (2003) 147 SJLB 232, [2003] NPC 21	234–36
Belfast City Council v Miss Behavin' Ltd [2007] UKHL 19, [2007] 1 WLR 1420, [2007] 3 All ER 1007, [2007] NI 89, [2007] HRLR 26, [2008] BLGR 127, (2007) 104(19) LSG 27, (2007) 151 SJLB 575	232
Bridgewater Canal Co Ltd v Geo Networks Ltd [2010] EWHC 548 (Ch), [2010] 1 WLR 2576, [2011] 1 P & CR 2, [2010] RVR 171, [2010] 13 EG 82 (CS)	144
British Arab Commercial Bank Plc v National Transitional Council of Libya [2011] EWHC 2274 (Comm), (2011) 161 NLJ 1215, (2011) 155(33) SJLB 31	112
British Railways Board v Pickin [1974] AC 765, [1974] 2 WLR 208, [1974] 1 All ER 609, (1974) 118 SJ 134 (HL)	29
Brown v Stott [2003] 1 AC 681, [2001] 2 WLR 817, [2001] 2 All ER 97, 2001 SC (PC) 43, 2001 SLT 59, 2001 SCCR 62, [2001] RTR 11, [2001] HRLR 9, [2001] UKHRR 333, 11 BHRC 179, (2001) 3 LGLR 24, (2001) 145 SJLB 100, 2000 GWD 40-1513 (PC)	225
Cadder v HM Advocate (Scotland) [2010] UKSC 43, [2010] 1 WLR 2601, 2011 SC (UKSC) 13, 2010 SLT 1125, 2010 SCL 1265, 2010 SCCR 951, [2011] HRLR 1, [2010] UKHRR 1171, 30 BHRC 257, (2010) 107(43) LSG 21, (2010) 154(41) SJLB 30	62
Carltona v Commissioners of Works [1943] 2 All ER 560 (CA)	187
Catholic Care (Diocese of Leeds) v Charity Commission for England and Wales [2012] UKUT 395 (TCC), [2013] 1 WLR 2105, [2013] 2 All ER 1114, [2012] Eq LR 1119	229
Deutsche Morgan Grenfell Group Plc v Inland Revenue Commissioners [2006] UKHL 49, [2007] 1 AC 558, [2006] 3 WLR 781, [2007] 1 All ER 449, [2007] STC 1, [2007] 1 CMLR 14, [2007] Eu LR 226, 78 TC 120, [2006] BTC 781, 9 ITL Rep 201, [2006] STI 2386, (2006) 103(43) LSG 29, (2006) 150 SJLB 1430	98
E (Children) (Abduction: Custody Appeal), Re [2011] UKSC 27, [2012] 1 AC 144, [2011] 2 WLR 1326, [2011] 4 All ER 517, [2011] 2 FLR 758, [2011] 2 FCR 419, [2011] HRLR 32, [2011] UKHRR 701, [2011] Fam Law 919, (2011) 161 NLJ 851, (2011) 155(24) SJLB 43	231
Fleming (t/a Bodycraft) v Customs and Excise Commissioners [2008] UKHL 2, [2008] 1 WLR 195, [2008] 1 All ER 1061, [2008] STC 324, [2008] 1 CMLR 48, [2008] Eu LR 455, [2008] BTC 5096, [2008] BVC 221, [2008] STI 181, (2008) 158 NLJ 182, (2008) 152(5) SJLB 30, [2008] NPC 5	98
Gardner v Lees 1996 JC 83, 1996 SLT 342	72
Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] AC 465, [1963] 3 WLR 101, [1963] 2 All ER 575, [1963] 1 Lloyd's Rep 485, (1963) 107 SJ 454 (HL)	28
Heron II. <i>See</i> Koufos v C Czarnikow Ltd	
Hinz v Berry [1970] 2 QB 40, [1970] 2 WLR 684, [1970] 1 All ER 1074, (1970) 114 SJ 111 (CA (Civ Div))	68
HM Treasury v Information Commissioner and Evan Owen [2009] EWHC 1811 (Admin), [2010] QB 563, [2010] 2 WLR 931, [2010] 2 All ER 55, [2009] ACD 73	133