

DIGEST OF CASES

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AGRICULTURAL HOLDINGS – NOTICES TO QUIT

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Agricultural Holding – Consent to operation of a Notice to Quit – Greater hardship – Landlord wishing to use house on the holding for herself – Agricultural Holdings (Scotland) Act 1949 section 26. *Lindsay-MacDougal v Paterson* 1987 SLCR 59.

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Agricultural Holding – Notice to remedy – Works of Repair – Notice to Quit – Counter-notice – Notice requiring matters to be determined by arbitration – Section 22 of the Agricultural Holding (Scotland) Act 1991 – Requisition for a Stated Case by the landlords. *Fane v Murray* 1994 SLCR 1.

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Agricultural holding – Notice to Quit – Counter-notice – Application for consent to the operation of the Notice to Quit – No specification of statutory ground under which the landlord sought consents – Relevancy. Mining Scotland Ltd v Fyfe 1999 SLCR 22.

Agricultural Holding – Notice to Quit – Counter-notice – Cases 1 and 2 of Schedule 2 of the Agricultural Holdings (Scotland) Act 1991 – Tenant having neither sufficient training in agriculture nor sufficient experience to farm the holding – Holding not a two-man unit and intention of the landlord to amalgamate it – Fair and reasonable landlord proviso. Viscount Reidhaven v Macdonald-Grant 2002 SLCR 33.

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AGRICULTURAL HOLDINGS – CERTIFICATES OF BAD HUSBANDRY

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Agricultural Holding – Certificate of Bad Husbandry – Rules of Good Husbandry – Sixth Schedule of Agriculture (Scotland) Act 19948 – Holding of two farms let to two brothers under one lease – One farm admittedly farmed well – Breaches of Rule 2 not sufficient to allow Court to grant certificate. *Ross v Donaldson* 1982 SLCR 53.

Agricultural Holding – Certificate of Bad Husbandry – Section 28 Agricultural Holdings (Scotland) Act 1949 – Rules of Good Husbandry – Rules of Good Estate Management – Fifth and Sixth Schedule to Agriculture (Scotland) Act 1948 – Sale of parts of holdings by landlord – Tenant’s removal of livestock from holding – Tenant’s actings excusable and reasonable. *Sinclair v Mackintosh* 1982 SLCR 43.

Agricultural Holding – Certificate of Bad Husbandry – Rules of Good Husbandry – Sixth Schedule of Agriculture (Scotland) Act 1948 – Maintenance of bound sheep stock on holding – Proper stocking of holding – Efficient standard of management of livestock. *Luss Estates Company v Firkin Farm Company* 1984 SLCR 1.

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Agricultural Holding – Certificate of Bad Husbandry – Rules of Good Husbandry – Sixth Schedule of Agriculture (Scotland) Act 1949 – Maintenance of permanent grass land – Proper stocking of holding – Efficient standard of livestock maintenance – Control of weeds – Maintenance of fixed equipment. *Cambusmore Estate Trust v Little* 1990 SLCR 1.

AGRICULTURAL SUBSIDIES APPEALS

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AGRICULTURAL HOLDINGS – OTHERS

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Agricultural Holding – Application by tenant for approval of carrying out of improvements in terms of Section 52 of the Agricultural Holdings (Scotland) Act 1949 – Improvement to be the erection of stock fencing to enclose a hill park – Circumstances in which the Court granted approval. MacKinnon v Arran Estate Trust 1988 SLCR 32.

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Agricultural Holding – Bequest of tenancy – Landlord averring that deceased testator was not the agricultural tenant – Action in Sheriff Court – Motion to sist Land Court application – Explication of Court's jurisdiction to determine that there was a valid lease – Change in Court's jurisdiction – Section 1(6) of Scottish Land Court Act 1993. Harvey v Mactaggart & Mickel Ltd (No. 1) 1998 SLCR 1.

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Agricultural holding bequest of tenancy – Landlord averring that deceased testator was not the tenant – Action in Sheriff Court – Motion to sist Land Court application

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Agricultural Holding – Bequest of lease – Application by legatee to be declared tenant – Applicant ordered to find caution – Caution not found – Disposal of application – Order assoilzing the respondent granted – Section 11 Agricultural Holdings (Scotland) Act 1991. *Hutton v Coal Authority* 2001 SLCR 1.

Agricultural Holding – Irritancy of Lease – Non-payment of Rent – Irritancy clause said to be void and unenforceable – Tenant’s right to retain rent. *Executors of J L Palmer v Shaw* 2002 SLCR 1.

Agricultural Holding – Irritancy of lease – Irritancy clause said to be void and unenforceable – Appeal to Court of Session – Agricultural Holdings (Scotland) Act 1991. *Executors of J L Palmer v Shaw* 2003 SLCR 13.

Agricultural Holding – Bequest of lease – Application by legatee to be declared tenant – Applicant ordered to find caution – Caution not found – Order assoilzing the respondent granted – Appeal by way of Stated Case to the Court of Session – Appeal upheld – Agricultural Holdings (Scotland) Act 1991. *Hutton v Coal Authority* 2003 SLCR 24.

Agricultural holdings – Repair and maintenance – Construction of post-lease agreement – Competency – General question – No specific item of equipment in dispute – Academic question – Live issue – Genuine disputed question – Practical considerations. *Telfer v Buccleuch Estates Ltd (I)* 2005 SLCR 44.

Agricultural holdings – Repair and maintenance – Construction of post-lease agreement – Natural decay – Fair wear and tear – Renewal – Upkeep – Agricultural Holdings (Scotland) Act 1949, section 5. *Telfer v Buccleuch Estates Ltd (II)* 2005 SLCR 51.

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Agricultural holdings – Tenancy – Limited Partnership – Valid Notice of Dissolution – General partner’s right to tenancy – Status of limited partner – Agent – Nominee-identity of Trustees – Narrow construction – Retrospective Legislation – Onus – Leading at proof – Agricultural Holding (Scotland) Act 2003 Sections 70, 72; Scotland Act 1998, Sections 29, 101. *Trustees for Mrs F Maxwell-Stuart v Douglas* 2006 SLCR (1) 188.

Agricultural holdings – Whether lease dated October 1949 but with stated duration of 14 years from Martinmas 1946 entered into “on or after November 1 1948” for purposes of section 5 of Agricultural Holdings (Scotland) Act 1991 – Whether statutory provisions or common law applied to maintenance of fixed equipment – Retention of rent – Whether tenant required to intimate the correct legal ground on which rent being retained – Whether a tenant entitled to rely on retention of rent and claim damages for the same breaches obligations. *Brewster v Strathmore Estates (Holding) Ltd* 2007 SLCR 133.

Agricultural holdings – Landlord and tenant – Informal agreement – No defined ish – Minimum period stipulated – Continued possession – Tacit relocation – Significance of silence – Other possible agreement – Agricultural Holdings (Scotland) Act 1991, section 3. *Johnstone v Milligan* 2007 SLCR 61.

Agricultural holdings – Limited partnership tenancy – General partner giving Notice of intention to become tenant – Notice given before termination – Whether given within 28 days – Agricultural Holdings (Scotland) Act, 2003, section 72 – The Agricultural Holdings (Relevant Date and Relevant Period) (Scotland) Order 2003. *The Isle of Gigha Heritage Trust v Heard* 2007 SLCR 28.

Agricultural holdings – Whether a single written contract purporting to create a series of grazings lets over a period of years resulted in a full secure tenancy under the Agricultural Holdings (Scotland) Act 1991 or in a series of separate grazing leases each covered by section 2(2)(A) of that Act – Effect of introduction of Agricultural Holdings (Scotland) Act 2003 on such a contract – Meaning of “let” for purposes of section 3(2) of 2003 Act. *Scottish Youth Hostels Association v Paterson* 2007 SLCR 1.

Agricultural Holdings – Section 2 of Agricultural Holdings (Scotland) Act 2003 and section 21 of Agricultural Holdings (Scotland) Act 1991 – Claim by tenant renouncing a 1991 Act tenancy to a 25 year limited duration tenancy under section 2 – Whether competent to terminate a 1991 Act tenancy by renunciation and without serving Notice to Quit or Notice of Intention to Quit under section 21. *City of Edinburgh Council v Little* 2008 SLCR 18.

Agricultural Holdings – Succession to improvements – Tenant’s fittings and fixtures – Tenant’s improvements – Ownership of Fixtures – Vesting – Rights to compensation – Agricultural Holdings (Scotland) Act 1991 sections 12, 18, 19 – Succession (Scotland) Act 1964, section 16. *Executors of the late G C Telfer v Buccleuch Estates Limited* 2008 SLCR 44.

Agricultural Holdings – Diversification Scheme – Agricultural Holdings (Scotland) Act 2003, sections 39, 40 – Whether landlord who had withdrawn objections under section 40 obliged to grant wayleave over land forming part of holding for purposes connected with tenant’s diversification scheme. *Grant v Glengarry Estate Trust* 2008 SLCR 63.

Agricultural Holdings – Limited partnership – Notice of dissolution of partnership served while negotiations for variation of partnership so as to terminate partnership and lease a year later than date specified in said notice continuing – Whether agreement for variation of partnership binding in absence of executed Minute of Variation – Whether limited partner personally barred from asserting otherwise and from founding on said Notice. *Tufnell v Townhead of Greenock Farm and Another* 2008 SLCR 167.

CROFTS – STATUS

Landholder's or Statutory Small Tenant's holding – Status of tenant – Rent payable for dwellinghouse previously revised by Rent Registration Officer – Rent payable for land subject of arbitration under Agricultural Holdings (Scotland) Act 1949 – Failure of Applicant to lead evidence on status of holding from 1 April 1912 – Circumstances in which application by tenant to determine whether holding was a landholder's or statutory small tenant's holding dismissed. *Clark v Moffat's Executors* 1982 SLCR 137.

Crofters (Scotland) Act 1961 Section 4(1) – Whether holding a croft in terms of Crofters (Scotland) Act 1955 Section 3(1) or a pertinent of a croft – Register of crofts – Crofters Holdings (Scotland) Act 1886 section 34 – Small Landholders (Scotland) Act 1911 Section 2(1)(ii) – Residence on or within two miles from the holding – Interpretation Act 1889 section 34 – Onus of proof on applicant to show subjects are pertinent – Circumstances under which Application dismissed. *Fraser v Van Arman* 1982 SLCR 79.

Appeal – Statutory Small Tenant – Small Landholders (Scotland) Act 1911 – Sufficiency of proof – Assignment by Statutory Small Tenants. *Roscoe's Trustees v Macrae* 1982 SLCR 129.

Croft – Statutory small tenancy in 1912 – Proof of the rental levels and of subsequent successors – Implied consent to assignment – Statutory small tenancy becoming croft in 1955 – Small Landholders (Scotland) Act 1911, Sections 26(3)(a) and 32(1) and Crofters (Scotland) Act 1955 Section 3(2). *Representatives of the late Hugh Matheson v Master of Lovat* 1984 SLCR 82.

Croft – Subjects purchased by crofter-owner occupier – Landlord's and tenant's interests merging – Principle of confusio – Whether owner occupier entitled to security of tenure. *Cameron v Bank of Scotland* 1988 SLCR 47.

Common grazings – Extent – Whether present village of Hamnavoe forms part of common grazings – Existence of common grazings prior to 1886. *Shetland Islands Council v Jamieson and Others* 1988 SLCR 97.

Crofts – Status – Entries in Register of Crofts – Whether holdings registered as crofts were in fact crofts – Sections 15(3) and 15(4) of the Crofters (Scotland) Act 1955. *Palmer's Trustees v Crofters Commission* 1989 SLCR 98.

Croft – Status – Estate ferryhouse and small area of a holding – Holding let to a person during his continuance in any office, appointment or employment of the landlord – Holding entered in the Register of Crofts – Plea of personal bar – Landlord's own actings – Section 33 of the Crofters Holdings (Scotland) Act 1886. *Guthrie v MacLean and Another* 1990 SLCR 47.

Croft – Status – Part of croft feued to third party – Dwellinghouse erected thereon – Whether area feued still formed part of the croft – Area never resumed – Appeal – Mora – Prescription. *Smith v Murray* 1990 SLCR 90.

Croft – Status – Registered croft – Holding let during an office appointment or employment of landlord – Tenant assisting landlord as a river watcher – Whether holding could drop out of Landholders Acts – Section 26(7) of the Small Landholders (Scotland) Act 1911 – Section 4 of the Crofters (Scotland) Act 1961. *Executors of A C Greg v Macdonald* 1991 SLCR 135.

Croft – Status – Onus of proof – Evidence of valuation rolls – Whether holding let to a landholder or statutory small tenant as at 1 April 1912 – No subsequent registration – Section 2 of the Small Landholders (Scotland) Act 1911. *Macdonald and Others – Applicants* 1991 SLCR 151.

Common grazings – Status of house thereon belonging to a crofter – Competing claim by another crofter alleging he had built the house at his own expense. *MacKay v MacLennan and Others* 1991 SLCR 163.

Common Grazings – Crofters rights in common grazings – Rights of grazing in favour of individual crofters forming part of their crofts – Rights to cut peat – Crofters not deprived of rights by acquiescence or prescription. *Macdonald v Prentices' Testamentary Trust and Others* 1993 SLCR 97.

Common grazings – Area reserved for houses – Crofters right to erect houses on area – Rent paid for area – Whether area formed part of common grazings. *Macdougall v Secretary of State for Scotland* 1993 SLCR 126.

Status – Cottar tenancy and tenancy-at-will compared – Exclusive jurisdiction of Lands Tribunal under section 21(1)(A) of the Land Registration (Scotland) Act 1979 confined to cases of purchase by the tenant – Occupation an essential feature of both forms of tenure – Tenancies-at-Will can only exist in limited areas where they have been shown from time immemorial to have existed. *Executors of Miss Maclean v Kershaw and Others* 1993 SLCR 145.

Croft – Status – Cottage and garden ground, formerly tenanted with potato patch, whether subject to crofting tenure – Definition of a croft examined, s.3(1) Crofters (Scotland) Act 1993. *Blackstock v Macrae* 1996 SLCR 32.

Croft – Status – Not in Register of Crofts – Onus of proof – Whether holding let to a statutory small tenant at 1 April 1912, ss.2(1) and 32(1) Small Landholders (Scotland) Act 1911 – Whether holding let during continuance in any office, appointment or employment of the landlord, s.26(7) 1911 Act & s.33 Crofters Holdings (Scotland) Act 1886 – s.3(1) Crofters (Scotland) Act 1993. *MacColl v Trustees of Captain Farquharson's Torloisk Trust* 1996 SLCR 44.

Common Grazings – Grazings shared by one crofter and two owner-occupiers of non-croft subjects – Reference by Crofters Commission – Whether grazings common grazings in terms of Crofters (Scotland) Act 1993. Crofters Commission v Arran Limited and Others 1996 SLCR 103.

Landholder's holding – Status of landholder – Agreement to renounce tenancy – Whether agreement void because it was not approved by the Court in terms of section 25 of the Small Landholders (Scotland) Act 1931. Stewart and Another v Orbertelli 1998 SLCR 104.

Croft – Landholder's holding purchased by landholder pre-1955 – Status of holding – Whether purchase took holdings outwith the Small Landholders (Scotland) Acts. Highland Primary Care NHS Trust v Thomson 1999 SLCR 32.

Croft – Status – Whether crofter had ceased to be tenant – Disposition by crofter in favour of son – Subsequent disposition by landlord in favour of crofter – Principal of accretion – Subsequent purported let by son to father as a crofter – Whether crofter had ever renounced his tenancy. Souter v Andrew and Others 1999 SLCR 52.

Croft – Status – Whether the subjects had been the home farm of a large estate and were therefore excluded from the terms of the Small Landholders (Scotland) Act 1911. Budge v Forrest-Jones and Others SLCR 2000 34.

Croft – Arrangement whereby part of the croft was let to a neighbouring crofting tenant – Nature of arrangements – No consent by Crofters Commission. Robertson v Williamson 2001 SLCR 18

Crofts – Common Grazings – Status of holding comprising one croft with a share in a common grazing which had been enlarged by the addition of two crofts each with a share in the same common grazing – Reference by Crofters Commission. Crofters Commission v The Scottish Ministers and Another 2001 SLCR 82.

Status – Land subject to landholders tenure in 1917 – Whether land still subject to landholders tenure at coming into force of Crofters (Scotland) Act 1955 – Failure of the Board of Agriculture to act in terms of section 17 Small Landholders Act 1911 resulting in the land ceasing to be subject to crofting tenure. Trustees of the late Sir J J M Horlick v O'Hara and Others 2001 SLCR 125.

Croft – Boundary dispute – Status – Claim by landlord that holding was not a croft – Section 33 of Crofters Holdings (Scotland) Act 1886 – Holding let to a ferryman – Holding was a statutory small tenancy – Status changed on creation of a joint tenancy. McEntee v Firm of A I MacLennan and Others 2002 SLCR 84.

Croft – Whether applicant was tenant of the croft – Crofters Commission consent to let of whole croft – Landlord notifying the Commission that the whole croft had

been let – Payment of rent by the applicant – Occupation of part of the croft only. *MacPherson v Walker* 2002 SLCR 76.

Croft – Purchase – Status – Principles of Personal Bar, waiver and acquiescence – Crofters (Scotland) Act 1993. *Macdonald v Johansen* 2003 SLCR 34.

Croft – Tenancy – Let by landlord – Consent of Crofters Commission – Question of whether proper consent had been given – Jurisdiction of Scottish Land Court to reduce decision of Crofters Commission – Rule of Court 56 – *ope exceptionis* Rule – Section 53 of Crofters (Scotland) Act 1993. *MacColl v MacGillivray and Another* 2004 SLCR 112.

Croft – Application for declarator that croft vacant – Bequest of croft – Whether Land Court has jurisdiction to decide whether intimation to landlord under subsection 10(2) of the Crofters (Scotland) Act 1993 valid. *Thrumster Estate Ltd v Miller and Others* 2006 SLCR (2) 35.

Crofting – Common grazings – Boundary determination – Crofters’ rights in grazings – Procedure by separate minute – Effect of de-crofting – Rights which have “flown off” – Actings of landlords – Personal bar – Whether personal bar available against singular successors – Effect of acquiescence or agreement – Crofters (Scotland) Act 1993. Section 5(3), section 47(10). *Kennedy v Stewart and Others (No. 1)* 2008 SLCR 222.

CROFTS – PURCHASE

Crofting Reform (Scotland) Act 1976 Section 2(1) – Application for authority to acquire area of land over which, by a previous decision of the Court the right of the Applicant was confined to an undefined right of grazing – Crofters (Scotland) Act 1955 Section 3(5) – Res Judicata – Circumstances under which application dismissed as incompetent. *Foxley v Forestry Commission* 1982 SLCR 73.

Section 2(1) Crofting Reform (Scotland) Act 1976 – Purchase by crofter – Conditions of sale – Whether conveyance to be by disposition or feu writ – Circumstances in which the Court found conveyance should be by disposition simpliciter. *Fulton v Noble* 1982 SLCR 97.

Crofting Reform (Scotland) Act 1976 – Acquisition of croft – Section 6(6) – Right to cut peat – Scarcity of peat banks – Estate’s attempt at regulation – Valuation of fixed equipment provided by landlord – Section 4(2)(b). *Macleod v Viscount Thurso* 1982 SLCR 123.

Croft – Acquisition by crofter of his croft – Consideration payable by crofter to former landlords within five years – Section 3(3) of Crofting Reform (Scotland) Act 1976 – Deduction for improvements allowed – Legal fees not deductible. *Clan Donald Lands Trust v Macdonald* 1983 SLCR 49.

Acquisition by crofter of area of croft land – Dispute as to whether area sought to be acquired formed part of croft – House on area substantially improved by landlords – House landlord's main asset – Objection to crofter's acquisition – Substantial degree of hardship. *Geddes v Gilbertson* 1983 SLCR 57.

Acquisition of croft by crofter – Crofting Reform (Scotland) Act 1976 – Order of Court authorising acquisition – Order extended in terms of Section 6(1) – Additional conditions sought by landlord refused – Principal Clerk authorised to execute conveyance. *Grant v Sykes* 1983 SLCR 65.

Acquisition of croft by crofter – Crofting Reform (Scotland) Act 1976 – Valuation of dwellinghouse originally provided by landlord but improved by crofter – Lease back of sporting rights – Expenses of conveyance to be granted to crofter. *MacLugash v Islay Estates Company*. 1985 SLCR 99.

Croft – Acquisition of part of croft land – Crofting Reform (Scotland) Act 1976 – Objection by landlords – Financial hardship to landlords. *Macphee v South Uist Estates Limited* 1985 SLCR 108.

Croft – Acquisition by crofter of croft – Objection by landlords – Substantial degree of hardship – Sound estate management – Landlords' proposal to extract peat for commercial purpose in terms of statutory conditions of tenure – Second Schedule – Crofters (Scotland) Act 1955 – *Macaskill v Basil Baird & Sons Ltd and Another* 1986 SLCR 133.

Acquisition of an apportionment of common grazings by crofter – Crofting Reform (Scotland) Act 1976 – Apportionment extending to more than one half of the estate belonging to the landlord – Substantial degree of hardship and detriment to sound management of the estate – No evidence of estate management. *Geddes v Martin* 1987 SLCR 104.

Croft – Purchase by tenant – Landlord a limited company which had been dissolved – Crown as bona vacantia – Execution of deed by Principal Clerk of Court – Expenses – Crofting Reform (Scotland) Act 1976. *Dunn v The Crown* 1989 SLCR 48.

Croft – Acquisition by crofter – Valuation of fixed equipment provided by landlord – Duration of shooting lease – Appeal by landlord Respondent – Sections 2(3) and 4(2) of the Crofting Reform (Scotland) Act 1976. *Livingstone v Nelson* 1990 SLCR 64.

Croft – Acquisition by crofter – Standing timber on croft – Timber to be reserved to the landlord to fell – Reservation of timber to landlord – Appeal – Reservation of right to access to landlord subject to certain conditions. *McBain v Viscount Reidhaven* 1990 SLCR 74.

Croft – Acquisition – Applicant the owner occupier of croft – Area of common grazings apportioned to applicant – Whether applicant entitled to acquire apportioned area – Section 3(6)(b) of the Crofters (Scotland) Act 1955 and Section 1 of the Crofting Reform (Scotland) Act 1976. *Anderson v Houston and Others* 1991 SLCR 11.

Croft – Acquisition by crofter – Title to be granted by landlord in favour of crofter’s nominee – Claw-back 5 year rule – Whether a disposal occurred – Section 3(3) of the Crofting Reform (Scotland) Act 1976. *Macdonald v Whitbread* 1991 SLCR 23.

Croft – Acquisition by crofter – Croft land bounded by public road – Verges between road and croft fence – Whether landlord had exclusive right to verges. *Lawson v Lord Strathcona* 1992 SLCR 36.

Croft – Acquisition by crofter of apportionment – “Deemed croft” under Section 3(6)(b) of the Crofters (Scotland) Act 1955 – Whether purchase would cause substantial hardship to the landlord or be substantially detrimental to the south management of the estate. *MacDonald v Hilleary* 1992 SLCR 51.

Croft – Acquisition by crofter – Title to be granted by landlord in favour of crofter’s nominee – Clawback 5 year rule – Whether a disposal occurred – Section 3(3) of the Crofting Reform (Scotland) Act 1976. Stated Case to Court of Session. *Macdonald v Whitbread* 1992 SLCR 59.

Croft – Apportioned area of common grazing – Acquisition by tenant – Whether apportionment formed croft land – Apportionment adjacent or contiguous to any other part of the croft – Appeal by landlord – Section 1(3) of the Crofting Reform (Scotland) Act 1976. *MacMillan v MacKenzie* 1993 SLCR 46.

Croft – Acquisition by crofter – Objection by landlord – Substantial degree of hardship – Financial hardship – Emotional hardship. *Fraser v MacKintosh* 1994 SLCR 38.

Croft – Purchase – Whether an apportionment lying 1200 metres from inbye croft land was “adjacent or contiguous” [to it] in terms of Section 12(3) of the Crofters (Scotland) Act 1993 – Apportionment main working part of the croft. *Ross v Trustees of Miss S N Barr* 1994 SLCR 60.

Croft – Acquisition by crofter – Objection by landlord – Substantial degree of hardship – Emotional hardship – Objection by landlord upheld by Divisional Court – Appeal by crofter sustained by Full Court. *Fraser v MacKintosh* 1995 SLCR 91.

Crofter – Acquisition of croft house site – Possible challenge to applicant’s right to tenancy – Delay in claiming tenancy – Any such claim against the executor of the deceased tenant. *Fowler v Smech Properties Ltd* 1995 SLCR 83.

Croft – Acquisition by crofter – Conditions to be imposed – Landlord’s reservation of minerals, right to work minerals – Access to work minerals – Reservation of right of access in landlord’s favour over croft. *Anderson v Williamson* 1997 SLCR 23.

Croft – Common Grazings – Apportionment – Acquisition by tenant of apportioned area – Whether forming croft land as defined in Section 12(3) of the Crofters (Scotland) Act 1993 – Objection to acquisition on ground of sound estate management – Section 13(2) of Crofters (Scotland) Act 1993. *Bowman v Guthrie* 1997 SLCR 40.

Croft – Acquisition by crofter – Grounds of objection by landlords – Emotional hardship. *Mackenzie v Hardy and Another* 1998 SLCR 49.

Croft – Acquisition by a crofter – Trees situated on the croft – Appeal against Divisional Court decision – Whether crofter’s or landlords’ trees – Appeal refused. *Sutherland v MacKenzie and Others* 1998 SLCR 70.

Croft – Acquisition of croft by tenant – Croft dwellinghouse on or pertaining to the croft tenanted by him – Section 12 of the Crofters (Scotland) Act 1993 – Sub-division of croft – Re-let of part of croft – Creation of two crofts – Appeal against the decision of the Divisional Court – Appeal refused – Section 12, Crofters (Scotland) Act 1993. *MacIntyre v Dagg and Others* 2003 SLCR 84.

Croft – Purchase of house site – ECHR – Landlords right to peaceful enjoyment of its possessions – Whether court had discretion to refuse the application – Sections 12 and 15 Crofters (Scotland) Act 1993. *Waugh v Thrumster Estate Ltd* 2003 SLCR 100.

Croft – Right to acquire – Expenses of purchase – Review of rent – Landlord’s right of property – Landlord’s possessions – Right to seek resumption – Capital value – Development value – Compensation – Human Rights – Onus – Litigation between private parties – Proportionality – Discretionary area of judgement – Possibility of compatible construction – Live issues for the Court – Crofters (Scotland) Act 1993, sections 12, 13 and 14 – European Convention on Human Rights, Article 1 of Protocol (No. 1) – Human Rights Act 1998, section 3. *Davie v The Trustees of the Countess of Sutherland’s No. 3 Settlement* 2005 SLCR 137.

Croft – Right to acquire – Whether substantial hardship – Whether substantially detrimental to the interests of sound estate management – Section 13(2) of Crofters (Scotland) Act 1993. *Waugh v Thrumster Estate Ltd (South Yarrow)* 2006 SLCR (2) 53.

CROFTS – RENTS

Crofters (Scotland) Act 1955 – Section 5 – Principles on which fair rent is to be fixed – Common grazings overgrazed and incapable of carrying stipulated souming – Classification of ground as arable in 1890 – Improvements in existence in 1886 – Element of competition for crofts – Relevance of agreed rents in district – Potential for profitable agriculture – Application of expertise of Member – Cultivation in terms of paragraph 3 of Second Schedule to 1955 Act – Decline in value of money. *Hitchcock’s Trustees v McCuish and Others* 1982 SLCR 101.

Appeal on determination of fair rents by Divisional Court – Enlargement of common grazings by land on different estate – Apportionment of rent necessary to show interest of second landlord – Necessity of second landlord being party to rent application – Principles on which fair rent is to be fixed. *Hitchcock’s Trustees v Macleod and Others* 1982 SLCR 109.

Landholders’ holdings – Determination of rent – Principles to be applied – Fair rent – Open market rent – Landlords’ or landholders’ improvements. *W C Johnston Limited v Fitzsimon and Another* 1983 SLCR 95.

Croft – Fixing of fair rents – Effect on profitability of crofts of flooding, disease and excessive numbers of deer on the common grazings – Section 5(4) Crofters (Scotland) Act 1955. *Luxmoore and MacDonald v Wilson and Others* 1989 SLCR 56.

Croft – Fair rent – Principles on which fair rent is to be fixed – Circumstances of the case, croft and district – Tenant’s improvements – Exclusion of open market rents – Decline in value of money. *Ward v Shetland Islands Council* 1990 SLCR 119.

Crofter – Acquisition by crofter – Landlord’s request to fix up-to-date fair rent – Original walls of the steading provided by landlord – Steading converted by crofter into holiday cottage – Basis of fixing fair rent. *Lawson v Lord Strathcona* 1992 SLCR 67.

Croft – Fair Rent – Principles on which fair rent is to be fixed – Budget spoken to by landlords to justify current rent. *MacMaster v Castle Leod Maintenance Fund Trustees* 1992 SLCR 74.

Landholder’s holding – Application to fix fair rent – Proposal to include holding in nitrate vulnerable zone – Whether proposal should be taken into account in fixing fair rent. *Hepburn Booth Trustees v Elder* 1994 SLCR 139.

Croft – Common Grazings – Application to fix fair rents – Sheep Stock Club – Principles to be applied in determining fair rents – Section 6 of the Crofters (Scotland) Act 1993. *Sutherland Estates v Sutherland and Others* 1997 SLCR 144.

Croft – Rent Review – Preliminary plea that the application is premature – Alleged agreement with deceased landlord that rent included the purchase price of the croft – Executor refusing to implement agreement – *Res noviter* – Whether executor is a new landlord for the purposes of s.6(2) Crofters (Scotland) Act 1993. *MacGillivray v Executor of J J MacColl* 2002 SLCR 133.

Croft – Rent – Rent as potential basis for purchase price – Whether it should be an open market rent – Landlords rights to peaceful enjoyment of and not to be deprived of his possessions – Human Rights Act 1998 – European Convention of Human Rights First Protocol: Article 1 - Crofters (Scotland) Act 1993, section 6(3). *Meeres v Sutherland Estates* 2004 SLCR 76.

Croft – Rent agreed by landlord and tenant at entry – Application by croft tenant to fix a fair rent twelve years later – Rent substantially reduced – Crofters (Scotland) Act 1993 section 6(3) and 6(4). *Baker v Macaire* 2008 SLCR 218

CROFTS – RESUMPTION

Common Grazings – Resumption – Reasonable purpose – Leasing as a small allotment – Extent of area sought to be resumed – Purpose to grant a squatter a legal right of occupancy. *Barvas Estate Limited v Crofters sharing in South Bragar Common Grazings* 1983 SLCR 47.

Croft resumption – Compensation in terms of Section 12 of Crofters (Scotland) Act, 1955 – Share in value of land in terms of Section 9 of Crofting Reform (Scotland) Act, 1976 – Open market value – Crofting value – Payment to be made by landlords. *Enessy Co SA v Crofters sharing in Tarbert Common Grazings* 1983 SLCR 54.

Resumption – Sale of ground to local authority for housing – Reasonable purpose – Onus on landlord applicant to prove that purpose is reasonable. *South Uist Estates Limited v MacDonald* 1983 SLCR 86.

Common Grazings – Resumption – Purpose – Leasing to Ministry of Defence – Share in value of land in terms of Section 9 of Crofting Reform (Scotland) Act 1976 – Assessment of open market value. *Trustees of Tenth Duke of Argyll v Crofters sharing in Sandaig Common Grazings* 1983 SLCR 89.

Croft – Resumption – Appeal – meaning of word compensation in Minute of Consent – Payment of share in value of land in terms of Section 9 of Crofting Reform (Scotland) Act 1976 – Conditions imposed exceeded those agreed to by the crofter and were unreasonable in the circumstances. *Galson Estate Ltd v Saunders* 1984 SLCR 74.

Common Grazings – Resumption – Chalet development – Crofters consenting to resumption – No planning permission for chalets – Applications continued to await planning permission. *Highland Coastal Trading Co v Urquhart and Others* 1984 SLCR 59.

Common Grazings – Resumption – Share in value of land in terms of Section 9 of Crofting Reform (Scotland) Act, 1976 – Value of land at date of resumption not when land originally acquired – Claim to the value of the land with houses erected thereon by landlord refused. *Highland Regional Council v Macaulay and Others* 1984 SLCR 70.

Common Grazings – Resumption – Fencing of area resumed – Installation of cattle grid – Conditions must fairly and reasonably relate to the resumption sought. *Ingenschay v Macaulay and Others* 1984 SLCR 79.

Common Grazings – Resumption as a site for a local water authority depot – Proposed site within the community fank – Danger to sheep, and loss of ground within the holding area. *Mackenzie v Forbes and Others* 1984 SLCR 65.

Common Grazings – Resumption as a site for a roads depot and salt store for Highway Authority – Possibility of salt being blown on to neighbouring crofts – Effect of salt on land and stock – Necessity of considering alternative sites for resumption. *Secretary of State for Scotland v Sutherland and Others* 1984 SLCR 53.

Common Grazings – Resumption of 3,375 acres for afforestation – Part of area only required for planting trees – Crofters Commission approval for the resumption of the whole area under section 12(3) of the Crofters (Scotland) Act 1955 “for forestry purposes” not in accordance with the Act and not preemptory on the Court – Application dealt with by the Court under section 12(1) and (2) of the Act. *Fountain Forestry Limited and Another v W H Ross and Others* 1985 SLCR 115.

Common Grazings – Resumption – Share in value of land in terms of section 9 of Crofting Reform (Scotland) Act 1976 – Open market value – Whether based on consideration originally offered for area to be resumed or on consideration finally accepted by landlords. *Trustees of Tenth Duke of Argyll v Mackay and Others* 1985 SLCR 121.

Common Grazings – Resumption – Fish farm shore base – Share in value of land due to the crofters in terms of section 9 of Crofting Reform (Scotland) Act 1976 – Open market value – Improvements not carried out by crofters failing to be deducted. *Western Ross Salmon Limited v Maclean and Others* 1985 SLCR 124.

Common Grazings – Resumption for access road to fish hatchery site – Share in value of land in terms of Section 9 of the Crofting Reform (Scotland) Act 1976 –

Open market value of site – Golden key cases – Open market value of access road. Vestey v Blunt and Others 1986 SLCR 150.

Common Grazings – Resumption for access road and site for a fish hatchery – Open market value – Share in value of land due to crofter Respondents – Section 9 of the Crofting Reform (Scotland) Act 1976. Kershaw v Mackenzie and Others 1987 SLCR 127.

Croft – Resumption – Reasonable purpose – Crofters (Scotland) Act 1955 section 12 – Major part of outrun of croft – Afforestation – Whole circumstances of case to be considered in relation to reasonable purpose. Shaw v Cummings 1987 SLCR 157.

Croft – Resumption – Use for hardwood tree plantation – Severance from main area of croft by new road – Value of the area to the croft as shelter for stock – Circumstances in which application refused – Section 12 of the Crofters (Scotland) Act 1955. Dunbeath Estate Ltd v Gunn 1988 SLCR 52.

Common grazings – Resumption – Whole common grazings to be conveyed to a preservation trust for conservation and archaeological purposes – Reasonable purposes – Application refused – Section 12 of the Crofters (Scotland) Act 1955. Dunbeath Estate Ltd v Henderson and Others 1988 SLCR 59.

Croft – Resumption for fish farm shore base – Area sought to be resumed restricted – Share in value of land due to the crofter Respondent – Open market value of site – Section 9 of the Crofting Reform (Scotland) Act 1976. Greg v MacLennan 1988 SLCR 70.

Common grazings – Resumption – Reasonable purpose – Tree planting – Share in the value of land in terms of Section 9 of the Crofting Reform (Scotland) Act 1976 – Consideration paid by authority possessing compulsory purchase powers – Deduction for existing trees. Hilleary v MacDonald and Others 1988 SLCR 80.

Common grazings – Resumption – Fish farm shore base – Share in value of land due to crofter Respondents – Section 9 of the Crofting Reform (Scotland) Act 1976. MacLennan Salmon Company Limited v Macdonald and Others 1988 SLCR 89.

Common grazings – Resumption for fish farm shore base – Share in value of land due to crofter respondents – Valuation evidence submitted to the Court – Open market value of comparable site – Section 9 of the Crofting Reform (Scotland) Act 1976. Trustees of the Applecross Trust v Cameron and Others 1988 SLCR 113.

Common grazings – Resumption for purpose of leasing ground for mineral extraction – Share in development value in terms of Section 9 of the Crofting Reform (Scotland) Act 1976 – Whether crofters entitled to share in value of

minerals. Trustees of the Tenth Duke of Argyll v MacCormick and Others 1988 SLCR 123.

Croft – Application for resumption – Resumption procedure under Section 12 of the Crofters (Scotland) Act 1955 contrasted with decrofting procedure under Section 16A of that Act – Resumption procedure invalid to remove a whole croft from crofting tenure – Consent of crofter Respondent. Fennell v Paterson 1990 SLCR 42.

Croft – Crofting tenure – Common Grazings – Resumption – Resumption for the purpose of leasing ground for mineral extraction – Crofters' share in the development value – Whether crofters entitled to share in the value of minerals. Stated case to Court of Session. Trustees of the Tenth Duke of Argyll v MacCormick 1990 SLCR 103.

Croft – Resumption – Purpose to preserve stand of aspen trees and provide cover for winged game – Trees providing wintering ground for stock – Circumstances in which application refused – Section 12 of the Crofters (Scotland) Act 1955. Fountain International Ltd v Macdonald 1991 SLCR 84.

Common grazings – Resumption – Construction of local authority road depot – Share in development value – Open market value of land – Question of updating consideration paid – Interest from date of resumption authorised. Highland Regional Council v Crofters sharing in Oldshoremore Common Grazings 1991 SLCR 114.

Croft – Resumption of whole croft for the purpose of an estate office, store, car parking, hotel staff accommodation, gardens and recreation area – Circumstances in which resumption of a whole croft was authorised – Sections 12 and 16 of the Crofters (Scotland) Act 1955. Macleod of Macleod v Mackenzie 1991 SLCR 95.

Croft – Resumption – Reasonable purpose – Use of building to store agricultural machinery – Purpose to regularise position – Appeal disposed of on written submissions. Murray v Smith 1991 SLCR 106.

Common grazing – Resumption – Purpose of leasing to local authority for gravel extraction – Share in development value payable to crofters – Section 12 of the Crofters (Scotland) Act 1955 – Section 9 of the Crofting Reform (Scotland) Act 1976. Trustees of Miss S N Barr v Crofters sharing in Oldshoremore Common Grazings 1991 SLCR 121.

Croft – Common grazings – Resumption – Resumption for the purpose of leasing ground for mineral extraction – Crofters share in the development value – Whether crofter is entitled to share in the value of minerals. Stated Case to Court of Session. Crofters sharing in Oldshoremore Common Grazings v Trustees of Miss S N Barr 1993 SLCR 56.

Common grazing – Resumption – Afforestation – Majority of Shareholders consenting – Approval by Crofters Commission – Refusal by Court to hear application. *Lochalsh Estates Limited v Crofters sharing in Avernish Common Grazings* 1993 SLCR 85.

Croft – Resumption – Purpose – Amenity ground for dwellinghouse – Area of ground excessive compared to the area of the adjoining dwellinghouse and garden ground – Whether decrofting rather than resumption appropriate – Non viability of remainder of croft not a good ground for authorising resumption. *Page v Greene* 1993 SLCR 94.

Croft – Common grazings – Order of Court authorising resumption subject to certain conditions – Motion to enforce these conditions – Motion for a rehearing – Jurisdiction of the Court. *Nicolson v Hoseason-Brown and Another* 1994 SLCR 74.

Common Grazing – Resumption – Use of area for agricultural purposes – Purpose to regularise the position held to be a reasonable purpose – Section 20 Crofters (Scotland) Act 1993. *Trustees of Sir G C D S Dunbar v Crofters sharing in Winless Common Grazings* 1994 SLCR 89.

Common Grazing – Resumption – Reasonable purpose – Agreement between shareholders and golf club depriving crofters of rights – Application for Court’s approval – Agreement binding on singular successors – Sections 5(3) and 20 of the Crofters (Scotland) Act 1993. *Trustees of the Tenth Duke of Argyll v Shareholders in Vaul Common Grazing* 1995 SLCR 111.

Common Grazings – Resumption – Land acquired by Secretary of State for Scotland in terms of a compulsory purchase order – Application dismissed as unnecessary. *Highlands and Islands Oil & Gas Comp. Ltd v Crofters sharing in Bourbloch Common Grazings* 1995 SLCR 110.

Croft – Resumption – Purpose to convey area of ground to a third party for a natural woodland regeneration scheme – Reasonable purpose – Section 20 Crofters (Scotland) Act 1993. *Shieldaig Farm (Gairloch) Ltd v Macrae* 1995 SLCR 54.

Common Grazing – Resumption – Construction of new road – Conditions to be imposed – Court’s discretion. *Noble v Crofters sharing in Upper Breakish Common Grazings* 1998 SLCR 82.

Common Grazings – Resumption – Sites of existing weaving shed and house – Share in development value – Open market value – Whether planning permission to be assumed. *Lochcarron John Buchan Ltd v Macrae and Others* 1998 SLCR 98.

Common grazings – Resumption – Contaminated landfill site – Section 21(5) Crofters (Scotland) Act 1993 – Deduction of amount attributable to development –

Whether negative sum to be deducted from open market value – Status of respondents who have not entered appearance. *Highland Council v Mackenzie and Others* SLCR 2000 75.

Common Grazings – Resumption – No opposition by crofters – Reasonable purpose – Land to be used for winter feeding ground for stags – Whether incompatible with crofting use. *Scobie v Crofters having rights in the common grazings of Morefield, Rhue and Ardmail* 2001 SLCR 100.

Croft – Common Grazing – Resumption – Purpose to assist conservation and protection by exclusion of livestock – Reasonable purpose – section 20, Crofters (Scotland) Act 1993. *Crerar v Murray and Others* 2004 SLCR 140.

Croft – Common Grazing – Resumption for construction of a wind farm – Resumption authorised subject to applicants lodging detailed plan of the exact locations of turbine bases and accesses – Share in development value – Sections 20 and 21 of Crofters (Scotland) Act 1993. *Hilleary v MacAskill and Another* 2004 SLCR 162.

Croft – Common Grazings – Resumption for building a marina and car park – Appeal against decision of Divisional Court – Whether a right of access existed as a pertinent over the foreshore – Whether a pertinent of a croft can be resumed – Effect of public rights in a foreshore on resumption – Expenses. *Marquis of Zetland v Johnson* 2004 SLCR 171.

Croft – Common grazings – Resumption – Planting for a conservation amenity woodland including natural regeneration – Amenity of landlords adjacent house and shelter belt – Reasonable purpose – Good of the croft – Good of the Estate and public interest. *Dumughn v Crofters sharing in Morefield Common Grazings* 2005 SLCR 168.

CROFTS – DECROFTING DIRECTIONS – APPEALS

“Decrofting” – Application for “Decrofting Order” – Proposed refusal by Crofters Commission – Appeal to Scottish Land Court – Local community composed largely of owner-occupiers – Whether still a crofting community – Proposed decision of Crofters Commission upheld. Crofters (Scotland) Act 1955 (as amended), Section 16(9) and 16(A)(2) and (8). *Steven v Crofters Commission* 1984 SLCR 30.

Application for decrofting order – Proposed refusal by Crofters Commission – Appeal to Scottish Land Court – Failure to grant Applicant a hearing – Applicant’s proposal to use croft for agricultural purposes – Workability of crofting legislation. *MacColl v Crofters Commission* 1985 SLCR 142.

Croft – Application for a Decrofting Order by the Crofters Commission – Refusal by Crofters Commission – Appeal to Scottish Land Court – General interests of

Crofting Community in the district – Demand for the tenancy of the croft – Crofters (Scotland) Act 1955 section 16A as amended. Moray Estates Development Company v Crofters Commission 1987 SLCR 141.

Croft – Application to Crofters Commission for Decrofting Direction – Proposed refusal by Crofters Commission – Appeal to Scottish Land Court – General interest of the crofting community – No evidence of demand for tenancy – Insufficient reasons for proposed refusal given – Appeal sustained. MacCormick v Crofters Commission 1990 SLCR 79.

Croft – Application for decrofting direction – Proposed refusal by Crofters Commission – Appeal to Scottish Land Court – General interest of the crofting community – Demand for tenancy – Proposed direction of Crofters Commission upheld. Sutherland v Crofters Commission 1990 SLCR 96.

Croft – Application to Crofters Commission for Decrofting Direction – Proposed refusal by Crofters Commission – Appeal to Scottish Land Court – General interest of the crofting community – Existence of a recognised crofting community – Expressed local demand – Appeal refused. Fox v Crofters Commission 1991 SLCR 38.

Application to Crofters Commission for decrofting direction – Proposed refusal by Crofters Commission – Appeal to Scottish Land Court – Previous application granted by Crofters Commission – Croft not acquired within 5 years – General interest of the crofting community – No local crofting community – Insufficient evidence of local demand – Appeal sustained. MacKintosh v Crofters Commission 1991 SLCR 48.

Croft – Application to Crofters Commission for decrofting direction – Proposed refusal by Crofters Commission – Appeal to Scottish Land Court – General interest of the crofting community – Existence of a crofting community – Expressed local demand – Appeal refused. Grant v Crofters Commission 1992 SLCR 104.

Croft – Application to Crofters Commission for decrofting direction – Proposed refusal by Crofters Commission – Appeal to Scottish Land Court – Whether Crofters Commission entitled to be a party to Land Court hearing – Section 16A(8) of the Crofters (Scotland) Act 1955. Hastings v Crofters Commission 1991 SLCR 31.

Croft – Decrofting direction sought for small portion of croft – Proposed refusal by Crofters Commission – Appeal to Scottish Land Court – Proposed use of area for two house sites – Reasonable purpose – Planning permission refused – General interest of crofting community – Demand for tenancy. Hastings v Crofters Commission 1992 SLCR 113.

Croft – Application to Crofters Commission for decrofting direction – Proposal by Commission to refuse decrofting direction – Appeal to Scottish Land Court – Purpose stated to be the growing of trees and plants – No definite plans prepared by applicant – Purported partial renunciation of tenancy – Appeal refused. *Mackay v Crofters Commission* 1996 SLCR 62.

Croft – Application to Crofters Commission for a Decrofting Direction of site of croft house – Proposed refusal by Crofters Commission – Appeal to Scottish Land Court – Extent of garden ground – Test to be applied – Section 25(1)(b) of the Crofters (Scotland) Act 1993. *Chandler v Crofters Commission* 1997 SLCR 51.

Croft – Application for decrofting direction by Crofters Commission – Refusal to grant direction – Appeal to Scottish Land Court – Questions of potential demand and interest of crofting community – Whether a crofting community existed. *Gammie v Crofters Commission* 1998 SLCR 49.

Croft – Application for decrofting direction – Proposed refusal by Crofters Commission – Appeal to Scottish Land Court – Area of ground to be sold as amenity ground and the site of an existing shed with the adjacent dwellinghouse – Reasonable purpose – Inadequate reasons in Crofters Commission decision – Presumption in favour of decrofting for a reasonable purpose – Section 25(1)(a) of the Crofters (Scotland) Act 1993. *Ferguson v Crofters Commission* 1999 SLCR 77.

Croft – Application to Crofters Commission for a decrofting direction – Proposed refusal by the Commission – Appeal to Scottish Land Court – Crofters Commission’s direction – Form of appeal – Presumption in favour of decrofting for a reasonable purpose – Otherwise no presumption in favour or against decrofting – General interests of the Community – Existence of a local crofting community – Sections 25(1)(a) and 25(2) of the Crofters (Scotland) Act 1993. *Knight v Crofters Commission* 1999 SLCR 102.

Croft – Appeal against decision of Crofters Commission to refuse to grant a decrofting direction – Reason for seeking this to be free from crofting legislation – Hearing *de novo* – A reasonable purpose – Interest of the crofting community in the district – Demand for croft – Sections 24 and 25 of the Crofters (Scotland) Act 1993. *Lamont v Crofters Commission* 2001 SLCR 7.

Croft – Appeal against refusal of de-crofting direction – Whole croft application involving various purposes associated with existing camp-site and with tourism generally – Whether reasonable purpose established – Need for intended purposes to be sufficiently firm and specific – Whether a crofting community existed in the district – Effect of de-crofting on that community and on the need to maintain local pool of croft land – Sections 20(1), 24(3) and 25 of Crofters (Scotland) Act 1993. *Palmer v Crofters Commission* 2006 SLCR (2) 1.

Croft – Application to Commission for Decrofting Direction – Appeal by Stated Case – Proper procedure in Stated Case – Questions of Law – Reference to documents *brevitatis causa* – Contents of reports – Adequacy of reasons – Definition of crofting community – Only two crofts – Definition of township – Small island – Presumptions – Reasonable purpose – Impact on croft – Impact on community – Disadvantage to community – Implications for housing policy – Valuation evidence – Expenses for success – Crofters (Scotland) Act 1993 (as amended) section 20(1) and (3), section 23, section 25, section 52A, section 61. Crofting Reform etc (Scotland) Act 2007. *Wotherspoon v Crofters Commission* 2008 SLCR 286.

CROFTS – OTHERS

Jurisdiction of Land Court over question of validity of bequest – Transmission of both liferent and fee – Crave ordaining Crofters Commission to alter Register of Crofts – Circumstances under which proof of averments on validity of bequest refused in respect of no jurisdiction – Crave ordaining Crofters Commission to alter Register of Crofts dismissed as incompetent. *McDonald’s Executor v Cameron* 1982 SLCR 11.

Landholders Holding – Removal – Statutory conditions of tenure – Deterioration – Subletting – Failure to cultivate. *Arran Properties Limited v Currie* 1983 SLCR 92.

Croft – Access – Jurisdiction – Establishment of a right of access – Express grant – Necessity – Use over a number of years – Nature and route of access. *Jeffrey v Dixon and Others* 1983 SLCR 69.

Common Grazings – Extent – Grazings regulations enacted by Court in 1946 – Effect of passing Crofters (Scotland) Act 1955 – Regulation still in force – Landlords right to graze sheep still subsisted. *Martin v Geddes and Others* 1983 SLCR 77.

Removal of croft for breach of statutory conditions – Section 3(3)(a) of, and Schedule 2 to, the Crofters (Scotland) Act 1955 – “one year rent unpaid”, “non-cultivation”, “sub-let” – statutory conditions purgeable as legal irritancies. *MacLaren v MacLaren* 1984 SLCR 43.

Appeal – Possession by a crofting tenant – Institution of a new lease – Alterations of Register of Crofts – Reservation of occupation by landlord – Non-payment of rent – Requirement for a valid lease. *Sutherland v Sutherland* 1984 SLCR 94.

Pertinents of a croft – Right of access – Prescription inapplicable to acquisition by tenant of right – Accesses of necessity – Modern vehicles as opposed to horse and cart. *Tait v Abernethy and Others* 1984 SLCR 19.

Common Grazings – Crofts – Boundary fence – Responsibility for repair and maintenance – Whether such responsibility lies with grazings committee or crofter. *Sikorski v Noble and Others* 1985 SLCR 139.

Common Grazings – Statutory conditions of tenure – Crofters (Scotland) Act 1955 – Second schedule – Landlord extracting minerals from grazings – Crofters claim for compensation – Compensation assessed. Crofters sharing in *Keil Common Grazings v MacColl* 1986 SLCR 142.

Croft – Boundaries – Preliminary plea-in-law of *res judicata* – Prior application to Court – Proper judicial determination of subjects in question – Same parties – Subject matter identical – Media concludendi identical – Plea sustained. *Maclean v Ballina Investments Ltd and Others* 1986 SLCR 168.

Croft – Hill ground extending to 150 acres not included in written lease – But claimed by crofter of the hill ground. Whether *rei interventus* operated as a result of use by the crofter of the hill ground. *Kemp v Johnston's Trustees* 1987 SLCR 115.

Common grazings – Agreement between landlords and crofters to plant part of the common grazing – Agreement depriving crofters of rights – Application seeking Court's approval – Section 3(4) of Crofters (Scotland) Act 1955. *Stornoway Trust v Mackay and Others* 1988 SLCR 108.

Croft – Application for removal – Definition of cultivation and persistently injure – Section 13(1)(b) and Schedule 2 of the Crofters (Scotland) Act 1955. *Burton Property Trust v MacRae* 1989 SLCR 34.

Croft – Application for removal – Non-payment of rent – Evidence of rent being offered to the landlord – Evidence of some cultivation of the croft – No evidence of the crofter being warned of persistently injuring the croft – Section 13(1)(a) and Schedule 2 of the Crofters (Scotland) Act 1955. *Cheyne v Hunter* 1989 SLCR 38.

Croft – Agreement to let croft to a new tenant – Conditions in the agreement – Whether these conditions deprived the crofter of any right conferred by Crofters (Scotland) Act 1955 on him. *Hamilton v Noble* 1989 SLCR 51.

Sheep Stock Club – Application to determine entitlement to be admitted as shareholder therein – Valuation of sheep stock club – Method of valuation to be used. *MacBeath v Smech Properties Limited and Others* 1989 SLCR 68.

Croft – Compensation for improvements – Whether compensation payable in terms of Section 14(4) of the Crofters (Scotland) Act 1955 or Section 6(2) of the Crofters (Scotland) Act 1961. *Nicolson v Noble and Another* 1989 SLCR 93.

Landholder's holding – Compensation for permanent improvements – Value to an incoming tenant – Method of valuation – Landlords counter claim for deterioration – Set off of outstanding arrears of rent. *Strachan v Harding* 1989 SLCR 112.

Croft – Removal of crofter – Failure to cultivate the croft – Failure to provide fixed equipment – Irritancies which can be purged – Application continued to 8 months to give crofter time to purge irritancies – Section 13 and the Second Schedule of the Crofters (Scotland) Act 1955. *Corbett v MacLeod* 1990 SLCR 25.

Common Grazings – Reference by Crofters Commission – Apportionment – One tenant holding all four shares in grazings – Whether *intra vires* of Crofters Commission to apportion all four parts (being total area) of grazings – Court's jurisdiction to review decisions by Crofters Commission – Section 27, Crofters (Scotland) Act 1955 – Section 4, Crofters (Scotland) Act 1961. *Crofters Commission v Gunn and MacKenzie* 1990 SLCR 36.

Croft – Removal – Crofter executed a trust deed for creditors – Subsequent application by crofter to acquire his croft house site – Court's discretion to order removal – Section 13 and Second Schedule of the Crofters (Scotland) Act 1955 – Section 1 of the Crofting Reform (Scotland) Act 1976. *Secretary of State for Scotland v Robertson* 1991 SLCR 74.

Croft – Assignment of tenancy – Purported assignment by tenant invalid without written consent by the landlord or the Crofters Commission – Court's statutory jurisdiction – Section 8(1)(a) of the Crofters (Scotland) Act 1955. *Jack's Trustee v Clark and Another* 1992 SLCR 93.

Croft – Access – Crofting access sought along an existing footpath – Right of way and access for crofting purposes contrasted – Methods by which a crofting right of access can be established. *MacCormick v South Uist Estates Limited and Another* 1992 SLCR 24.

Croft – Succession – Executor dative appointed – Nomination by executor of his son to succeed to tenancies – Nomination invalid. *Budge v Budge and Others* 1993 SLCR 136.

Croft – Common grazings – Liability for maintenance and repair of township fences – The responsibility of a Grazings Committee – Motion to enforce order of the Court – Payment of each crofter's share for the erection of the fence. *MacAskill v MacLeod and Others* 1994 SLCR 95.

Croft – Common grazings – Determination of ownership of grazings share – Whether owner of share entitled to membership of sheep stock club – Expenses – Motion by solicitor for increase of fees in view of importance of case granted. *Watson v Campbell and Another* 1994 SLCR 100.

Croft – Common grazings – Determination of shares in the common grazings – Basis on which such determination is to be made – Reference to rents payable for croft – Wintering capacity of crofts – *Campbell v Campbell and Others* 1994 SLCR 124.

Croft – Sublet – Duration of sublet – Whether sublet could continue on tacit relocation. *Martin v MacSween and Another* 1995 SLCR 99.

Croft – Statutory conditions of tenure – Creation of parking and turning space to service two house plots – Landlord seeking to enter upon the croft for the purpose of opening or making roads – Appeal by crofter respondent – Alternative crave of resumption authorised. *Cameron v MacKinnon* 1995 SLCR 67.

Croft – Common Grazings – Conveyance of parts, privileges and pertinents of a croft creating a servitude of pasture over common grazings – Purported relet of common grazings to former crofters invalid – Apportionment – Shareholders – Owner-occupiers with rights of grazing – No crofters with shares in common grazings – Whether one shareholder entitled to an apportionment. Section 47(10) of the Crofters (Scotland) Act 1993. *Trustees for the Proprietors of Halistra Common Grazings v Lambert and Another* 1996 SLCR 80.

Croft – Access – Competency – Disputed servitude right as a question of heritable title outwith the Court's jurisdiction - Crofters (Scotland) Act 1993, S.53(1). *Atkinson v Dupres and Another* 1996 SLCR 20.

Croft – Purported partial renunciation of tenancy by crofter – Competency – Reference by Crofters Commission to Scottish Land Court – Section 53(1) of the Crofters (Scotland) Act 1993. *Crofters Commission v Mackay* 1996 SLCR 72.

Croft – Common Grazings – Apportionment – Nature of crofter's rights in apportionment – Not restricted to grazing – Crofters (Scotland) Act 1993. *Guthrie v Bowman (No. 1)* 1997 SLCR 71.

Croft – Common Grazings – Apportionment – Removal of crofter – Use of apportioned area as a land fill waste tip – Failure to cultivate – Injury to croft – Purported breaches of Conditions 3 and 5 of the Second Schedule of the Crofters (Scotland) Act 1993. *Guthrie v Bowman (No. 2)* 1997 SLCR 80.

Croft – Right of access – Pertinent of croft – Access established by express grant from the landlord, necessity of usage over a number of years. *Kennedy v Kershaw and Others* 1999 SLCR 125.

Croft – Determination of boundaries – Prior application to Court in which parties agreed boundaries of croft – Subsequent purchase by crofter in 1978 – Application to determine that strip of land was part of the croft and for purchase – Plea of *res judicata* – Abandonment – Appeal to Full Court sustained – Full Court held that

applicant had no rights as crofting tenant since 1978. *MacKintosh v Forbes and Another* 1999 SLCR 155.

Croft – Access – Appeal against Divisional Court decision – Pertinent right – Non use thereof – Prescription. *Kennedy v Kershaw and Macleod* 2000 SLCR 1.

Croft – Boundary – Preliminary pleas-in-law of competency and *res judicata* – Prior application to the Court – Whether Divisional Court would be re-interpreting the decision of a previous Divisional Court – Proper judicial determination of subjects in question – Parties with identical interest to their predecessors – Subject matter identical – *Media concludendi* identical – Both pleas sustained. *Sutherland v Macleod and Others* 2000 SLCR 18.

Crofts – Re-organisation of township – Proposed agreements with prospective tenants to renounce certain rights under the Crofters (Scotland) Act 1993 – Validity of the agreements – Whether binding on singular successors. *National Trust for Scotland v Macrae and Others* 2000 SLCR 56.

Common Grazings – Apportionment of a share – Status of the apportionment – Whether the apportionment is a croft in terms of the Crofters (Scotland) Act 1993. *Macarthur v Trustees of the Tenth Duke of Argyll and the Crofters Commission* 2000 SLCR 94.

Common Grazings – Reference by Crofters Commission – Apportionment Order by Crofters Commission – Request to determine validity of that Order – Powers of Scottish Land Court. *Crofters Commission v Westminster (Liverpool) Trust Co and Others* 2000 SLCR 115.

Croft – Declaration of vacancy – Claim for compensation for permanent improvements – Open market value – Incoming tenant value – Consideration of grant aid in assessing compensation – Sections 32(2) and 32(3) of the Crofters (Scotland) Act 1993. *MacLean v MacSween's Trust* 2001 SLCR 36.

Croft – Access – Application to determine right of access over another croft – Decision of the Divisional Court appealed. *Dinan v Dennett* 2001 SLCR 55.

Croft – Removal – Obligation to fence croft not complied with – Crofter removed – Appeal to Full Court – Duty of agent – Relationship between agent and party. *Cowell v Beaton* 2001 SLCR 65.

Common grazings – Boundaries – Jurisdiction to determine extent – Enlargement. *Fraser v Spencer and Others* 2001 SLCR 116.

Croft – Opening or making roads – Road over croft – Rights of landlord – Relevance of reasonableness – Authorised third party – Existing road – Compensation – Damage – Personal injury – Loss of value – Right to respect for

private and family life – Peaceful enjoyment of possessions – Access to jetty and foreshore - Crofters (Scotland) Act 1993, Schedule 2, paragraph 11(e) and (f) – Human Rights Act 1988, Section 3, Part 11, Article 8, First Protocol, Article 1. MacDonald (AP) v West Minch Salmon Ltd and Another 2003 SLCR.

Croft – Compensation for improvements – Methods of assessment - Crofters (Scotland) Act 1993 section 32(1) and 32(2) and section 32(3). Lochalsh Estates Limited v Macrae and Another 2004 SLCR 52.

Croft – Failure by crofter to pay rent – Non-cultivation of the croft – Failure to provide fixed equipment on the croft – Abandonment of the croft – Crofters (Scotland) Act 1993. Watson v Jackson 2005 SLCR 179.

Croft – Boundary dispute – Area of one croft previously decrofted – Whether part of neighbouring croft erroneously decrofted also – Status of plans forming part of decrofting directions. Imrie v Kerrigan 2007 SLCR 220.

Crofting – Crofting community right to buy under part 3 of the Land Reform (Scotland) Act 2003 – Whether interposed leases valid in the crofting context – Whether such leases require Crofters Commission consent under section 23(3) of the Crofters (Scotland) Act 1993 – Whether water courses on common grazings “eligible croft land” for purposes of section 68 of 2003 Act. Scottish Ministers v Paice Trust Limited and Others 2007 SLCR 166.

Crofting – Appeal against refusal by Divisional Court of an Order ordaining neighbouring crofter to accept ownership and responsibility for boundary fence – Whether such an Order competent – Distinction between an Order of the Court and the note accompanying that Order – Limitations on extent to which the Full Court can interfere with conclusions of a Divisional Court on matters of fact – Extent to which Court can assist party litigants in presentation of their cases. Allen v Hargreaves and Another 2007 SLCR 161.

Croft – Boundaries between two crofts – Insufficient evidence to enable one boundary to be clearly determined – Section 53A Crofters (Scotland) Act 1993. Newlands v Assynt Trust Limited and Others 2008 SLCR 276.

COTTARS

Crofters (Scotland) Act 1961 Section 4(1)(d) – Application to determine whether area of ground containing site of dwellinghouse formed part of common grazings – Non rent-paying cottar or “squatter” - Crofters (Scotland) Act 1955 Section 28 – House erected prior to passing of Crofters Holdings (Scotland) Act 1886 – Circumstances under which declarator craved was granted restricted to site of house. Duke of Argyll’s Trustees v MacNeill and Others 1982 SLCR 67.

Crofting Reform (Scotland) Act 1976 – Application to purchase dwellinghouse – Former cottar subject – Claim on death of cottar it reverted to croft – Circumstances under which application dismissed. *MacLennan v Duke of Argyll's Trustees* 1982 SLCR 119.

Cottar – House built on a site “gifted” by crofters – No clear consent by landlord – No right of succession to cottar subjects – Implied abandonment of the subjects by claimant. *Phillips v MacPhail and Others* 1993 SLCR 166.

Cottar – Status – Acquisition of subjects by cottar – Determination of considerations payable for site and dwellinghouse thereon. *Corbett v Assynt Estates* 1995 SLCR 122.

Cottar – Status – Agreement to let dwellinghouse by crofter to his mother – Subsequent decrofting of croft – Agreement purported to include mother and son – Lack of knowledge and consent by respondent. *Ross v Ross* 1997 SLCR 123.

Cottar – Status – Agreement to let dwellinghouse by crofter to his mother – Subsequent decrofting of croft – Agreement purported to include other and son – Lack of knowledge and consent by respondent – Appeal. *Ross v Ross* 1998 SLCR 95.

Common Grazings – Cottar house erected thereon – Subsequent apportionment to a crofter – Status of the house site. *North Uist Estate Trust 1990 v Morrison* 2000 SLCR 120.

PROCEDURE AND EXPENSES

Legal Aid (Scotland) Act 1967 – Section 13 – Payment of expenses of successful Respondents from Legal Aid Fund – Circumstances under which successful Respondents found entitled to expenses from Legal Aid Fund. *Clark v Moffat's Executors* 1982 SLCR 141.

Certification of Application as appropriate for the employment of Senior and Junior Counsel – Certification of expert witness – Rule 102 of the Rules of Court – Circumstances in which the Court sanctioned the employment of Counsel and refused to certify an expert witness who had not given evidence. *Eagle Star Insurance Company Limited v Edward* 1982 SLCR 145.

Motion for a rehearing more than three months since date of order – Special cause for leave to move for a rehearing to be shown – Additional evidence available at original hearing not essential error – Rules of Court Numbers 77 and 78(1). *MacLean v Ballina Investments Limited and Another* 1983 SLCR 99.

Appeal – Expenses – Refusal by Divisional Court to award expenses to one party upheld. *Margrave Estates Limited v Mackintosh and Others* 1983 SLCR 102.

Certification of Application as appropriate for the employment of Senior Counsel – Application withdrawn before hearing – Applicant found liable for Respondent’s expenses – Circumstances in which Court sanctioned the employment of Senior Counsel. *Clapton v McWhirter* 1984 SLCR 108.

Procedure – Expert witness – Order authorising expert witness for one party to inspect holding owned by other party – Numbers 59 and 102 of Rules of Court – Number 84(1) of Sheriff Court Rules. *Cunningham v Rowe and Others* 1985 SLCR 154.

Motion for leave to move for a rehearing – Special cause – Motion for a rehearing – Essential error – Motion by Respondent for enforcement of Divisional Court’s Order. *Tait v Abernethy and Others* 1975 SLCR 147.

Croft – Resumption – Motions for Rehearing – Nos. 78(2) and 78(3) of the Rules of Court – Circumstances in which motions refused. *Dunbeath Estate Ltd v Gunn* 1988 SLCR 136.

Agricultural holding – Certificate of bad husbandry – Procedure – Time limit of 9 months – Motion by tenant to sist for legal aid refused – Agricultural Holdings (Scotland) Act 1949, Section 28. *Cambusmore Estate Trust v Little* 1989 SLCR 134.

Procedure – Rules of court – Crofter – Removal – No service of application on crofter – Edictal citation – Reponing note – Numbers 23 and 63 of the Rules of Court. *Lakey v Lakey* 1989 SLCR 129.

Procedure – Appeal – Time limit for lodging appeal against Divisional Court Order – One month from date of intimation – Appeal not timeously lodged – Rules of Court Numbers 13, 30 and 67. *Fraser v Scott and Others* 1990 SLCR 126.

Expenses – Award of expense against Applicant – Applicant legally aided – Motion for payment of Respondent’s expenses by Scottish Legal Aid Board – Respondent a limited company – Respondent required to prove severe financial hardship – Section 19 of the Legal Aid (Scotland) Act 1986. *MacDonald v Galson Estate Limited and Others* 1990 SLCR 128.

Agricultural Holding – Notice to Quit – Interests of good husbandry – Sound estate management – Procedure – Specification of documents – Tenant’s confidential accounts. *Kildrummy (Jersey) Ltd v Calder* 1991 SLCR 168.

Agricultural holding – Rent determined by arbiter – Appeal against arbiter’s award – Comparable subjects referred to by parties – Inspection of comparables – Court’s powers of inspection – Section 7(19) of the Small Landholders (Scotland) Act 1911

and Section 73 of the Agricultural Holdings (Scotland) Act 1949. *Moll v McGregor* 1991 SLCR 173.

Croft – Expenses – Motion to allow the successful party an increase in expenses after taxation of 50% - Act of Sederunt (Fees of Solicitors in the Sheriff Court) 1989. *MacAskill v Maclean* 1992 SLCR 143.

Expenses – Award of expenses against applicant – Taxation by Auditor of Court – Objection by Respondent to certain items in the account of expenses – Items relating to work prior to lodging application – Objection sustained. *Mowat v Trustees for MacSween Trust* 1992 SLCR 147.

Agricultural holdings – Notice to Quit – Counter-notice – Section 22 of the Agricultural Holdings (Scotland) Act 1991 – Award of expenses in favour of tenant respondent – Requisition for a Stated Case by landlords on the question of expenses refused. *Fane v Murray* 1994 SLCR 148.

Expenses – Award of expenses against respondent – Respondent legally aided – Motion to modify liability for expenses to nil – Onus of respondent to prove that he was still in a financial position which would qualify him for Legal Aid – Section 19 of the Legal Aid (Scotland) Act 1986. *Macdonald v Tarn and Others* 1994 SLCR 150.

Expenses – Award of expenses against respondent – Motion by applicant for percentage increase of solicitor's fees to cover responsibility undertaken by the solicitor – Obligation on solicitor making such a motion to satisfy the Court that an increase is justified. *Lawson v Lord Strathcona* 1995 SLCR 133.

Motion for expenses on Court of Session scale – Motion to certify expert witness – Motion for additional fee. *Kirkcaldy District council v Forrester* 1996 SLCR 142.

Expenses – Award of expenses – Percentage increase in fees sought – Factors to be taken into account – Rates recovered under party and party basis compared with solicitor and client basis – Rule 95 of the Rules of Court – Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993, SI 1993/3080. *Stott v Willox* 1997 SLCR 165.

Croft – Resumption application – Final Order granted authorising resumption – Subsequent motion by neighbouring crofter to be sisted as an additional respondent in the application to allow the application to be reheard and to allow parties a hearing as to whether the subjects referred to in the Order authorising resumption formed part of the motioner's croft. *Dinan v Dennett* 1999 SLCR 70.

Croft – Boundaries – Decision of Divisional Court – Appeal – Motion for rehearing – Hearing *de novo*. *Macdonald v Macnab and Another* (No. 1) 2000 SLCR 133.

Expenses – Objection to taxation of party litigant’s Account of Expenses – Claim for loss of earnings of a self employed witness – Claim for party litigant’s own time – Scottish Land Court Rules 1992 – Rule 99 – Litigants in Person (Costs and Expenses) Act 1975 – Macdonald v Macnab and Another (No. 2) 2000 SLCR 145.

Expenses – Application to determine a right of access – Applicant successful in his application – Refusal by Divisional Court to award him expenses – Appeal by applicant – Full Court award of expenses. Finlayson v The Stornoway Trust and Others 2000 SCLR 158.

Croft – Resumption – Share in development value – Evidence of open market sales – Specification of documents lodged for respondent – Procedure. Borve and Annishader Township v MacLeod 2001 SLCR 160.

Expenses – Award by Divisional Court – Appeal – Legally aided party – Modification of liability in terms of section 18(2) of the Legal Aid (Scotland) Act 1986. MacDougall v MacNeil and Another 2001 SLCR 166.

Expenses – Successful respondent – Actions of the Respondent prior to litigation – Court exercising its discretion to depart from the normal rule that expenses follow success – Award of no expenses due to or by either party. MacPherson v Walker (No. 2) 2002 SLCR 142.

Competency of motion for recall of an Order – Whether the Order was a “Final Order” – Rule of Court 1(k) – Joint minute for parties signed by their agents narrating settlement – Order issued by the Court giving effect to joint minute – Recall of Order later sought by one party on basis his solicitor had no authority to settle. Sinclair v Sinclair 2002 SLCR 139.

Croft - Claim by Applicant to be tenant of crofts – Application settled prior to hearing – Subsequent motion for leave to appeal – Grounds on which leave to appeal refused – Motion for a rehearing – Agent’s ostensible authority to enter an agreement in this application - Crofters (Scotland) Act 1993. Sinclair v Sinclair 2003 SLCR 146.

Croft – Common grazing – Boundaries – Decision of Divisional Court – Motion for a rehearing – Pertinent and important evidence tendered and erroneously rejected or disallowed – Essential error - Crofters (Scotland) Act 1993. Fraser v Spencer and Others 2003 SLCR 153.

Expenses – Legal aid certificate not lodged in process – No opposition to motion for expenses – Decerniture – Motion for modification of liability after decerniture – Legal Aid (Scotland) Act 1986. MacGillivray (AP) v MacColl (Executor of the late J J MacColl) 2003 SLCR 161.

Croft – Common grazing – Resumption application – Answers by one respondent lodged out of time – Court’s refusal to allow these Answers – Motion for leave to appeal – Appeal – Time limit for lodging appeal – Nos. 71 & 72 of the Rules of Court. *Hilleary v Campbell* 2004 SLCR 203.

Expenses – Whether cause should be certified as suitable for the employment of senior counsel – Scottish Land Court Rule 96. *Barrachander Farm v The Scottish Ministers* 2008 SLCR 310.

Agricultural holdings – Interim interdict, normal procedures – Primary question of wrongful interference with rights of applicant – Obligation on applicant to show *prima facie* case – Case to try – Balance of convenience a second stage – Renewal of fencing – Straying stock – Enlargement of holding – Implied agreement – Landlord’s power to straighten and regulate marches – Jurisdiction of Court – Agricultural Holdings (Scotland) Act 2003, section 84. *Bucleuch Estates Ltd v Telfer* 2008 SLCR 1.

Crofting – Common grazings – Boundary determination – Crofters’ rights in grazings – Procedure by separate minute – Resumption applications – Expenses – Practice – Special circumstances - Crofters (Scotland) Act 1993. Sections 20 and 21. *Kennedy v Stewart and Others (No. 2)* 2008 SLCR 271.