

# COLLECTIVE JUDGING IN COMPARATIVE PERSPECTIVE



COLLECTIVE JUDGING  
IN COMPARATIVE PERSPECTIVE

Counting Votes and Weighing Opinions

*Edited by*  
Birke HÄCKER  
Wolfgang ERNST

 INTERSENTIA

Cambridge – Antwerp – Chicago

Intersentia Ltd  
8 Wellington Mews  
Wellington Street | Cambridge  
CB1 1HW | United Kingdom  
Tel: +44 1223 736 170  
Email: mail@intersentia.co.uk  
www.intersentia.com | www.intersentia.co.uk

*Distribution for the UK and  
Rest of the World (incl. Eastern Europe)*  
NBN International  
1 Deltic Avenue, Rooksley  
Milton Keynes MK13 8LD  
United Kingdom  
Tel: +44 1752 202 301 | Fax: +44 1752 202 331  
Email: orders@nbninternational.com

*Distribution for Europe*  
Intersentia Publishing nv  
Groenstraat 31  
2640 Mortsel  
Belgium  
Tel: +32 3 680 15 50  
Email: mail@intersentia.be

*Distribution for the USA and Canada*  
Independent Publishers Group  
Order Department  
814 North Franklin Street  
Chicago, IL 60610  
USA  
Tel: +1 800 888 4741 (toll free) | Fax: +1 312 337 5985  
Email: orders@ipgbook.com

## Collective Judging in Comparative Perspective. Counting Votes and Weighing Opinions

© The editors and contributors severally 2020

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

No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, without prior written permission from Intersentia, 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 Intersentia at the address above.

Artwork on cover: 'Vriendengesprek' © Twan de Vos

ISBN 978-1-78068-624-0  
D/2020/7849/73  
NUR 820

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

## PREFACE

This collection is the product of a conference entitled ‘Counting Votes and Weighing Opinions – Collective Judging in Comparative Perspective’, held at All Souls College, Oxford, on 20 and 21 July 2017. The event was co-organised by the editors (both University of Oxford) together with Professor Beate Gsell (Ludwig-Maximilians-Universität München) and Professor Thomas Rübner (Universität Trier). Our co-organisers regularly sit on cases heard by Higher Regional Courts of Appeal in Germany (Oberlandesgericht München and Koblenz, respectively).

The aim of the conference was to bring together distinguished judges and academics from around the world to discuss the mechanisms, processes and challenges of collective decision-making by judicial bodies. Participants came from a mix of civil law and common law jurisdictions. Judges from national, supranational and international courts reported on their respective practices and experiences, leading to an exchange of views on the pros and cons of various different approaches. Lord Neuberger of Abbotsbury, who was at the time of the conference about to step down as President of the UK Supreme Court, in a closing speech elegantly pulled together all the various red threads that had emerged over two days of intense debate.

Most of contributions contained in this book are updated, amended and in a few cases significantly expanded versions of the papers delivered at the conference. For the purposes of this publication, we have ordered them by the type of jurisdiction they pertain to. The book commences with an ‘impulse paper’ prepared by Wolfgang Ernst that also initiated the conference itself. The chapters include two (by Professor Gertrude Lübbe-Wolff and by Judge Theodor Meron, co-authored by Christos Ravanides) which would have been given at the conference had not circumstances beyond the speakers’ control prevented them from attending. Towards the end of the book, we have added a part containing ‘voices from the audience’. It encompasses contributions by conference attendees who kindly agreed to provide insight into their own experience of collective judging in other bodies, or who offered reflections and comments on the conference topic from an academic perspective. The book concludes with some remarks by the organisers, flagging aspects we found particularly interesting and which we think could inform future ‘court design’.

As editors, we would like to thank, first and foremost, our co-organisers Beate and Thomas who helped conceive the conference and whose substantive

input and financial contribution towards travel costs was invaluable. The conference itself was hosted and generously funded by All Souls College, Oxford. We are sure to be speaking for everybody involved in thanking the Warden and Fellows of the College for their magnificent hospitality. We are also very grateful to the participants for their various contributions and to the authors for bearing with us over a somewhat protracted editing process. Finally, we are indebted to Ann-Christin Maak-Scherpe and her team at Intersentia Publishing, particularly Rebecca Moffat, for producing such an elegant volume.

Birke Häcker  
Wolfgang Ernst

# CONTENTS

<i>Preface</i> .....	v
<i>List of Cases</i> .....	xiii
<i>List of Contributors</i> .....	xix

## PART I. DESIGNING COLLEGIATE COURTS' DECISION-MAKING PROCESSES

### Chapter 1. The Fine-Mechanics of Judicial Majoritarianism

Wolfgang ERNST .....	3
I. Judicial Majoritarianism as a 'Group Choice' Issue .....	3
II. The Judges' Conference from a Comparative Perspective .....	4
III. Formal Issues of Intra-Court Collective Decision-Making .....	8

## PART II. COLLEGIATE COURTS IN THE COMMON LAW TRADITION

### Chapter 2. Collective Judging in the UK Supreme Court

Robert REED .....	21
I. The House of Lords .....	22
II. Crossing the Square .....	24
III. Other Inherited Characteristics .....	25
IV. Constitutions for Appeals .....	26
V. Preparation for the Hearing .....	28
VI. During the Hearing .....	30
VII. The Conference .....	30
VIII. After the Conference .....	32
IX. Comparison with Other Courts .....	33

### Chapter 3. Collective Judging in the Court of Appeal of England and Wales

Jack BEATSON, Launcelot HENDERSON and Keith LINDBLOM .....	37
I. Introduction .....	37
II. The Court of Appeal Civil Division .....	38

III.	Judgments.....	41
IV.	Two-Judge Courts.....	43
V.	The Court of Appeal Criminal Division.....	44

**Chapter 4. An Australian Perspective on Collective Judging**

	Susan KIEFEL.....	47
I.	Background.....	47
II.	Preparation.....	48
III.	Conferences.....	49
IV.	The First Draft.....	51
V.	Concurrence and Dissent.....	53
VI.	Professor Wolfgang Ernst’s Question.....	55
VII.	Conclusion.....	55

**Chapter 5. Collegial Decision-Making in the US Courts of Appeals**

	Harry T EDWARDS.....	57
I.	Introduction.....	58
II.	Collegial Decision-Making in the US Courts of Appeals.....	65
III.	Conclusion.....	93
	Appendices.....	94

**PART III. COLLEGIATE COURTS IN THE EUROPEAN CIVIL LAW TRADITION**

**Chapter 6. Collective Judging in the French *Cour de Cassation***

	Dominique HASCHER.....	129
I.	Introduction.....	129
II.	Collegial Work and the Decision-Making Process.....	131
III.	Counting Votes and Weighing Opinions.....	134
IV.	Conclusion.....	139

**Chapter 7. Collective Judging in Germany**

	Johanna SCHMIDT-RÄNTSCH.....	141
I.	Introduction.....	141
II.	The German Legal System.....	143
III.	The German Judicial System.....	145
IV.	Conditions of Deliberation and Decision-Making.....	147



## **Chapter 8. Why is the German Federal Constitutional Court a Deliberative Court, and Why is that a Good Thing? A Comparative Assessment**

Gertrude LÜBBE-WOLFF .....	157
I. Virtues of Deliberative, Consensus-Oriented Decision-Making .....	158
II. Some Relevant Parameters .....	161
III. Culture and Institutional Frameworks .....	178
IV. Concluding Remarks .....	178

## **Chapter 9. Collective Judging at the Swiss Supreme Court**

Thomas STADELMANN .....	181
I. Preliminary Remarks .....	181
II. Cognisance .....	182
III. Organisation of the Court .....	182
IV. Caseload .....	183
V. Working Procedures .....	183
VI. Decision-Making Process .....	185
VII. Voting .....	188
VIII. Consistency of Case Law .....	192

## **Chapter 10. Decision-Making in Appellate Courts: An Austrian Experience**

Georg KODEK .....	195
I. Introduction .....	195
II. Institutional Framework .....	196
III. Composition and Organisation of Panels .....	197
IV. The 'Workflow' within the Court .....	199
V. The Actual Deliberation Process .....	201
VI. Conclusion .....	204

## **PART IV. COLLEGIATE COURTS IN A NON-EUROPEAN CIVIL LAW JURISDICTION: THE CASE OF JAPAN**

### **Chapter 11. Collective Judging by Collegiate Courts in Japan**

Akira OJIMA and Naoki ONISHI .....	207
I. Introduction .....	208
II. Judicial System in Japan .....	208
III. Legal Provisions and Practices Governing Collective Judging .....	213
IV. Collective Judging in the Japanese Supreme Court .....	214

V.	Collective Judging in District Courts and High Courts.....	218
VI.	Improvement and Reinforcement of the Function of Collective Judging in Japan .....	223

PART V. SUPRANATIONAL AND INTERNATIONAL  
COLLEGIATE COURTS

**Chapter 12. The Fine-Mechanics of Judicial Decision-Making  
at the European Court of Human Rights**

	Angelika NUSSBERGER .....	227
I.	Courts as Black Boxes? .....	228
II.	Factors Determining Decision-Making .....	229
III.	Complexity of Decision-Making .....	235
IV.	Voting Procedures .....	248
V.	Summary .....	251

**Chapter 13. Collective Judging in the Court of Justice  
of the European Union**

	Thomas VON DANWITZ .....	253
I.	The Nature of the Legal Order of the European Union .....	254
II.	Operating Conditions of the CJEU .....	255
III.	Decision-Making in the Court of Justice .....	260

**Chapter 14. The Anatomy of the Deliberation Process at International  
Criminal Tribunals**

	Theodor MERON and Christos RAVANIDES .....	267
I.	Introduction .....	268
II.	Deliberations at the ICTY/ICTR .....	270
III.	Challenges for the MICT .....	280
IV.	Deliberations at Other International Criminal Tribunals .....	281
V.	Concluding Remarks .....	282

**Chapter 15. Collective Judging in the Catholic Church**

	Markus GRAULICH .....	283
I.	The Tribunals of the Church at the Local Level .....	283
II.	The Tribunals of the Church at the Universal Level .....	288
III.	Conclusion .....	289

## PART VI. VOICES FROM THE AUDIENCE AND CLOSING REMARKS

**Chapter 16. Decision-Making by the Boards of Appeal of the European Patent Office**

Kevin GARNETT.....	293
I. Introduction.....	293
II. The Boards of Appeal.....	295
III. Decision-Making by the Boards of Appeal.....	297
IV. The Enlarged Board of Appeal.....	301
V. Summary.....	302

**Chapter 17. Collegiality and Collectivity in Common Law Courts**

James LEE.....	303
I. Introduction.....	303
II. The Courts and their Eras.....	304
III. Judgments and Judgement.....	307
IV. Statistics.....	311
V. Collegiality and Collectivity.....	317
VI. Conclusions.....	320

**Chapter 18. Should Judges Tell Us What They Think?**

Richard HYLAND.....	323
---------------------	-----

**Chapter 19. Beyond Anecdote and Synecdoche**

Matthew DYSON.....	327
I. Nature of Decision-Making.....	328
II. Who is Making the Decision.....	330
III. How Decisions are Made.....	332
IV. Conclusion.....	338

**Chapter 20. Concluding Remarks**

Wolfgang ERNST, Beate GSELL, Birke HÄCKER and Thomas RÜFNER.....	339
--	-----



# LIST OF CASES

## INTERNATIONAL CRIMINAL TRIBUNALS

<i>Prosecutor v Radovan Karadžić</i> , Case No 13-55-A, Judgment, 20 March 2019 . . . . .	281
<i>Prosecutor v Augustin Ngirabatware</i> , Case No 12-29-A, Judgment, 18 December 2014 . . . . .	281
<i>Prosecutor v Pauline Nyiramasuhuko et al</i> , Case No ICTR-98-42-A, Order Setting the Timetable for the Appeals Hearing, 19 March 2015 . . . . .	274
<i>Prosecutor v Pauline Nyiramasuhuko et al</i> , Case No ICTR-98-42-A, Order for the Preparation of the Appeals Hearing, 25 March 2015 . . . . .	274
<i>Prosecutor v Naser Oric</i> , Case No IT-03-68-A, <i>Addendum</i> to Order Scheduling Appeal Hearing, 10 March 2008 . . . . .	274
<i>Prosecutor v Momčilo Perisic</i> , Case No IT-04-81-A, Judgment, 28 February 2013 . . . . .	277
<i>Prosecutor v Vujadin Popovic et al</i> , Case No IT-05-88-A, Order for the Agenda of the Appeal Hearing, 7 November 2013 . . . . .	274
<i>Prosecutor v Prlic et al</i> , Case No IT-04-74-A, Scheduling Order for Appeal Hearing, 15 December 2016, and Order for the Preparation of the Appeal Hearing, 1 March 2017 . . . . .	274
<i>Prosecutor v Nikola Sainovic et al</i> , Case No IT-05-87-A, Judgment, 23 January 2014 . . . . .	277
<i>Prosecutor v Vojislav Šešelj</i> , Case No 16-99-A, Judgment, 11 April 2018 . . . . .	281
<i>Prosecutor v Zdravko Tolimir</i> , Case No IT-05-88/2-A, <i>Addendum</i> to the Scheduling Order for Appeal Hearing, 31 October 2014, 1–2 . . . . .	274

## EUROPEAN COURT OF HUMAN RIGHTS

<i>Al Nashiri v Poland</i> , app 28761/11, 24 July 2014 . . . . .	242
<i>Al-Dulimi and Montana Management inc v Switzerland</i> (GC), app 5809/08, 21 June 2016 . . . . .	250–51, 261
<i>Al-Khawaja and Tahery v United Kingdom</i> (GC), app 26766/05 22228/06, 15 December 2011 . . . . .	231
<i>Burmych and others v Ukraine</i> (GC), app 46852/13, 47786/13, 54125/13, 56605/13, 3653/14, 12 October 2017 . . . . .	233, 242
<i>Frodl v Austria</i> , app 20201/04, 8 April 2010 . . . . .	251
<i>Christine Goodwin v United Kingdom</i> , app 28957/95, 11 July 2002 . . . . .	230
<i>Greece v United Kingdom (I)</i> , app 176/56, 26 September 1958 . . . . .	246
<i>Sabri Güneş v Turkey</i> (GC), app 27396/06, 26 June 2012 . . . . .	242
<i>H v Belgium</i> , app 8950/80, 30 November 1987 . . . . .	228
<i>Hasan and Chaush v Bulgaria</i> , app 30985/96, 26 October 2000 . . . . .	230
<i>Hirst v United Kingdom No. 2</i> (GC), app 74025/01, 6 October 2005 . . . . .	251
<i>JK and others v Sweden</i> , app 59166/12, 23 August 2016 . . . . .	250
<i>Lambert v France</i> , app 46043/14, 5 June 2015 . . . . .	247

<i>M v Germany</i> , app 19359/04, 17 December 2009	232
<i>Mercan v Turkey</i> , app 56511/16, 8 November 2016	238
<i>Moreira Ferreira v Portugal No. 2</i> (GC), app 19867/12, 11 July 2017	235
<i>N v United Kingdom</i> , app 26565/05, 27 May 2008	230
<i>Nada v Switzerland</i> (GC), app 10593/08, 12 September 2012	261
<i>Nagmetov v Russia</i> (GC), app 35589/08, 30 March 2017	242
<i>Bélané Nagy v Hungary</i> (GC), app 53080/13, 13 December 2016	235
<i>Paposhvili v Belgium</i> (GC), app 41738/10, 13 December 2016	231
<i>Paradiso and Campanelli v Italy</i> (GC), app 25358/12, 24 January 2017	231, 247
<i>Reinhardt and Slimane-Kaïd v France</i> , app 21/1997/805/1008 and 22/1997/806/1009, 31 March 1998	132
<i>Suominen v Finland</i> , app 37801/97, 1 July 2003	228
<i>Tagayeva and others v Russia</i> , app 26562/07, 14755/08, 49339/08, 49380/08, 51313/08, 21294/11 and 37096/11, 13 April 2017	232
<i>Tymoshenko v Ukraine</i> , app 49872/11, 30 April 2013	242
<i>Oleksandr Volkov v Ukraine</i> , app 21722/11, 9 January 2013	232, 242
<i>Zihni v Turkey</i> , app 59061/16, 29 November 2016	238

## EUROPEAN COURT OF JUSTICE

<i>Axa Belgium</i> , C-494/14, 15 October 2015	256
<i>Alimanovic</i> , C-67/14, 15 September 2015	257
<i>CILFIT and Lanificio di Gavardo SpA v Ministero della Sanità</i> , C-283/81, 6 October 1982	26
<i>Commission and Others v Kadi</i> , C-584/10 P, C-593/10 P and C-595/10 P, 18 July 20143	260
<i>Council v Bank Saderat Iran</i> , C-200/13 P, 21 April 2016	261
<i>Council v Fulmen and Mahmoudian</i> , C-280/12 P, 28 November 2013	260
<i>Council v Manufacturing Support &amp; Procurement Kala Naft</i> , C-348/12 P, 28 November 2013	260
<i>Dano</i> , C-333/13, 11 November 2014	257
<i>Digital Rights Ireland and Others</i> , C-293/12 and C-594/12, 8 April 2014	257
<i>Edilizia Mastrodonato</i> , C-147/15, 28 July 2016	256
<i>ERGO Poist'ovňa</i> , C-48/16, 17 Mai 2017	256
<i>Europäisch-Iranische Handelsbank v Council</i> , C-585/13 P, 5 March 2015	260
<i>JZ</i> , C-294/16 PPU, 28 July 2016	256
<i>Kadi and Al Barakaat International Foundation v Council and Commission</i> , C-402/05 P and C-415/05 P, 3 September 2008	260
<i>Melki and Abdeli</i> , C-188/10 and C-189/10, 22 June 2010	258
<i>PFE</i> , C-689/13, 5 April 2016	258
<i>Popescu</i> , C-632/15, 26 April 2017	256
<i>Private Equity Insurance Group</i> , C-156/15, 10 November 2016	258
<i>The English Bridge Union</i> , C-90/16, 26 October 2017	257
<i>Vnuk</i> , C-162/13, 4 September 2014	256

## AUSTRALIA

<i>Brisbane City Council v Amos</i> [2019] HCA 27 .....	315
<i>Carter Holt Harvey Woodproducts Australia Pty Ltd v The Commonwealth</i> [2019] HCA 20 .....	314
<i>Clubb v Edwards; Preston v Avery</i> [2019] HCA 11 .....	315
<i>CRI028 v The Republic of Nauru</i> [2018] HCA 24 .....	312
<i>Frugniet v Australian Securities and Investments Commission</i> [2019] HCA 16 .....	314
<i>Hughes v The Queen</i> [2017] HCA 20 .....	317
<i>Jones v Hyde</i> [1989] HCA 20, (1989) 85 ALR 23 .....	316
<i>Kalimuthu v Commissioner of the Australian Federal Police</i> (see under <i>Lordianto v Commissioner of the Australian Federal Police</i> )	
<i>Kendirjian v Lepore</i> [2017] HCA 13 .....	312, 316
<i>Lordianto v Commissioner of the Australian Federal Police; Kalimuthu</i> <i>v Commissioner of the Australian Federal Police</i> [2019] HCA 39 .....	312
<i>Northern Territory v Mr A Griffiths (deceased) and Lorraine Jones on behalf</i> <i>of the Ngaliwurru and Nungali Peoples</i> [2019] HCA 7 .....	315
<i>Perara-Cathcart v The Queen</i> [2017] HCA 9 .....	320
<i>Preston v Avery</i> (see under <i>Clubb v Edwards</i> )	
<i>Queensland Premier Mines Pty Ltd v French</i> [2007] HCA 53 .....	316
<i>Rizeq v Western Australia</i> [2017] HCA 23 .....	317
<i>Tony Strickland (a pseudonym) v Commonwealth Director of Public</i> <i>Prosecutions</i> [2018] HCA 53 .....	315
<i>UBS AG v Tyne</i> [2018] HCA 45 .....	315

## GERMANY

### FEDERAL CONSTITUTIONAL COURT

BVerfGE 50, 290, ref 1 BvR 532, 533/77, 1 March 1979 .....	257
BVerfGE 73, 40, ref 2 BvE 2/84, 14 July 1986 .....	257

### FEDERAL SUPREME COURT

BGHZ 118, 34, ref V ZR 83/91, 3 April 1992 .....	149
BGH NJW-RR 2009, 286, ref LwZR 54/98, 28 November 2008 .....	150
BGH NJW-RR 2014, 243, ref BLW 4/12, 29 November 2013 .....	151

### FEDERAL ADMINISTRATIVE COURT

BVerwG, ref 4 B 23/17 [cf Juris database], 13 November 2017 .....	151
---	-----

## FEDERAL LABOUR LAW COURT

BAG NJW 2015, 3738, ref 1 AZR 223/14, 14 April 2015 ..... 151

## SWITZERLAND

BGE 133 II 450, ref 1A 45/2007, 14 November 2007 ..... 261

## UNITED KINGDOM

<i>A (conjoined twins), Re</i> [2001] 2 WLR 480 (CA) .....	14
<i>Benedetti v Sawiris</i> [2013] UKSC 50, [2014] AC 938 .....	33
<i>Brumby (Inspector of Taxes) v Milner</i> [1976] 1 WLR 1096 (HL) .....	42
<i>BS (Congo) v The Secretary of State for the Home Department</i> [2017] EWCA Civ 53, [2017] 4 WLR 45 .....	42
<i>Cape Intermediate Holdings Ltd v Dring (Asbestos Victims Support Groups Forum UK)</i> [2019] UKSC 38, [2019] 3 WLR 429 .....	306
<i>Doherty v Birmingham CC</i> [2006] EWCA Civ 1739, [2007] LGR 165 .....	334
<i>Fairchild v Glenhaven Funeral Services Ltd</i> [2002] UKHL 22, [2003] 1 AC 32 .....	138
<i>Four Seasons Holdings Incorporated v Brownlie</i> [2017] UKSC 80, [2018] 1 WLR 192 .....	318
<i>Gow v Grant</i> [2012] UKSC 29, 2012 SLT 829 .....	319
<i>Hinz v Berry</i> [1970] 2 QB 40 (CA) .....	204
<i>Investment Trust Companies v Revenue and Customs Commissioners</i> [2017] UKSC 29, [2018] AC 275 .....	33
<i>JD v East Berkshire Community Health NHS Trust</i> [2005] UKHL 23, [2005] 2 AC 373 .....	138
<i>Littlewoods Ltd v Commissioners for Her Majesty's Revenue and Customs</i> [2017] UKSC 70, [2018] AC 869 .....	31
<i>Lowick Rose LLP v Swynson Ltd &amp; Anor</i> [2017] UKSC 32, [2018] AC 313 .....	306
<i>Marley v Rawlings</i> [2014] UKSC 51, [2015] AC 157 .....	319
<i>Menelaou v Bank of Cyprus Plc</i> [2015] UKSC 66, [2016] AC 176 .....	33
<i>Michalak v General Medical Council</i> [2017] UKSC 71, [2017] 1 WLR 4193 .....	318
<i>Northern Ireland Human Rights Commission's Application for Judicial Review, Re; Reference by the Court of Appeal in Northern Ireland pursuant to Paragraph 33 of Schedule 10 to the Northern Ireland Act 1998 (Abortion) (Northern Ireland)</i> [2018] UKSC 27, [2019] 1 All ER 173 .....	305
<i>OBG Ltd v Allan, Douglas v Hello! Ltd (No.3), Mainstream Properties Ltd v Young</i> [2007] UKHL 21, [2008] 1 AC 1 .....	318
<i>Omychund v Barker</i> (1744) 1 Atk 21, 26 ER 15 .....	315
<i>R (on the application of British American Tobacco and others) v Secretary of State for Health</i> [2016] EWCA Civ 1182, [2017] 3 WLR 225 .....	42
<i>R (on the application of Conway) v Secretary of State for Justice</i> [2018] UKSC B1 (permission to appeal) .....	311
<i>R (on the application of E) v Governing Body of JFS</i> [2009] UKSC 1, [2009] 1 WLR 2353 .....	305
<i>R (on the application of L) v Commissioner of Police of the Metropolis</i> [2009] UKSC 3, [2010] 1 AC 410 .....	305



<i>R (on the application of Miller) v Secretary of State for Exiting the European Union</i> [2016] EWHC 27 (Admin), aff'd [2017] UKSC 5, [2018] AC 61 . . . . .	27, 30, 38, 169, 310
<i>R (on the application of Miller) v The Prime Minister</i> [2019] UKSC 41, [2020] AC 373 . . . . .	27, 306, 311
<i>R v Waya</i> [2012] UKSC 51, [2013] 1 AC 294 . . . . .	28
<i>Sigma Finance, Re</i> [2009] UKSC 2, [2010] 1 All ER 571 . . . . .	305
<i>Whittington Hospital NHS Trust v XX</i> [2020] UKSC 14, [2020] 2 WLR 972 . . . . .	319

## UNITED STATES OF AMERICA

<i>Talbot v Seaman</i> , 5 US 1 (1801) . . . . .	160–61
<i>United States v Microsoft Corporation</i> 253 F.3d 34 (DC Circuit 2001) . . . . .	88
<i>Zell v American Seating Co</i> , 138 F.2d 641, 644 (2d Cir 1943); rev'd 322 US 709, 64 S Ct 1053, 88 LEd 1552 (1944) . . . . .	326



## LIST OF CONTRIBUTORS

*Sir Jack Beatson*

Former Lord Justice of Appeal at the Court of Appeal of England and Wales;  
Visiting Professor, University of Oxford

*Thomas von Danwitz*

Judge of the Court of Justice of the European Union; Professor of Public Law and  
European Union Law at the University of Cologne (on leave)

*Matthew Dyson*

Associate Professor of Law, University of Oxford, and Fellow of Corpus Christi  
College, Oxford

*Harry T Edwards*

Senior Circuit Judge and Chief Judge Emeritus of the United States Court  
of Appeals for the DC Circuit, Washington DC; Professor of Law, New York  
University School of Law

*Wolfgang Ernst*

Regius Professor of Civil Law, University of Oxford, and Fellow of All Souls  
College, Oxford

*Kevin Garnett QC*

Former Member of the Boards of Appeal of the European Patent Office

*Msgr Markus Graulich*

Undersecretary of the Pontifical Council for Legislative Text; former Prelate  
Auditor of the Tribunal of the Roman Rota (*Tribunal Rotæ Romanæ*)

*Beate Gsell*

Professor of Private Law, Civil Procedure and European Private Law and  
Procedure, Ludwig-Maximilians-Universität (LMU) München; Judge at the  
Higher Regional Court of Appeal in Munich (*Oberlandesgericht München*)

*Birke Häcker*

Professor of Comparative Law and Director of the Institute of European and  
Comparative Law, University of Oxford, and Fellow of Brasenose College, Oxford

*Dominique Hascher*

Judge of the Supreme Judicial Court of France (*Cour de cassation*), Paris

*Sir Launcelot Henderson*

Lord Justice of Appeal at the Court of Appeal of England and Wales; Fellow of All Souls College, Oxford

*Richard Hyland*

Distinguished Professor of Law, Rutgers Law School, Camden, New Jersey

*Susan Kiefel AC*

Chief Justice of Australia

*Georg Kodek*

Judge of the Austrian Supreme Court (*Oberster Gerichtshof*); Professor of Civil and Commercial Law at Wirtschaftsuniversität (WU), Vienna

*James Lee*

Reader in English Law, The Dickson Poon School of Law, King's College London

*Sir Keith Lindblom*

Lord Justice of Appeal at the Court of Appeal of England and Wales

*Gertrude Lübbe-Wolff*

Former Judge at the German Federal Constitutional Court; Professor (em.) of Public Law at the University of Bielefeld

*Theodor Meron*

Judge of the International Residual Mechanism for Criminal Tribunals; Visiting Professor, University of Oxford, and Fellow of Trinity College, Oxford

*Angelika Nussberger*

Professor of Constitutional Law, Public International Law and Comparative Law at the University of Cologne; former Vice-President of the European Court of Human Rights

*Akira Ojima*

Chief Judicial Research Official at the Supreme Court of Japan; former Presiding Judge of the Tokyo High Court

*Naoki Onishi*

Presiding Judge of the Otsu District Court (Head of the Criminal Division); former Judge of the Tokyo High Court

*Christos Ravanides*

Legal Officer at the Office of Legal Affairs of the United Nations; former deputy *chef de cabinet* to Judge Theodor Meron, then-President of the International Criminal Tribunal for the former Yugoslavia (ICTY)

*Lord Reed of Allermuir*

President of the Supreme Court of the United Kingdom

*Thomas Rüfner*

Professor of Private Law, Roman Law, Legal History and Civil Procedure, the University of Trier; Judge at the Higher Regional Court of Appeal in Koblenz (*Oberlandesgericht Koblenz*)

*Johanna Schmidt-Räntsch*

Deputy Presiding Judge of the Vth Civil Senate of the German Federal Court of Justice (*Bundesgerichtshof*); Honorary Professor, Humboldt-Universität (HU) Berlin

*Thomas Stadelmann*

Judge at the Swiss Supreme Court (*Bundesgericht*)

