

Index

- 'absent parties' 6
- ADESF litigation *see under* Brazil
- administrative schemes, public and private 4, 5
 - 'compensation matrix', adopting 5
- adverse cost risks *see* costs/adverse cost risks
- agency issues in class/group litigation 27, 36–40, 167
 - agency problems 39–40, 131–2, 145–6
 - adverse implications from
 - divergence of interests 145–6, 212
 - attorney-initiated class actions, mitigation mechanisms absent in 146
 - client monitoring, mitigation of
 - agency problems by 146
 - early settlement 146, 212
 - inherent nature of 393–7
 - insufficient investment in litigating 146, 212
- individuals in cases, importance of 39
- standing, models of
 - ad hoc approved or certified non-profit entities 38–40
 - entrepreneurial lawyer 37, 39
 - governmental agencies 37, 38, 39–40
 - long-standing non-profit associations/designated entities 32, 37–8, 39–40
- see also* Reichart Industries/Shemesh litigation *under* Israel
- alternatives to class actions 4–5
 - ad hoc management strategies 4–5
 - administrative schemes, public and private 4, 5
 - distinguishing from class actions 5, 6
 - group litigation procedures 4, 5–6
 - informal ad hoc strategies 6
- Aristocrat litigation *see under* Australia
- Atlas litigation *see under* Canada
- Australia 13–14
 - Aristocrat litigation 139–40, 190, 198–202
 - background 198–9
 - 'closed' class, restricting to 162, 200–202
 - commercial litigation funder 139, 191, 199–200, 202–3
 - control of the litigation 204
 - facts of 140
 - interlocutory litigation 200
 - lead plaintiff, appointment of 200, 202
 - opt-out process 200–201
 - settlement after trial 139, 190, 199, 202, 206
 - Australian Law Reform Commission 162, 202
 - civil litigation/compensation, deterrent value of 271
 - class actions 160–64
 - 'access to justice', and 190, 196–7, 204–7
 - advantages of 205
 - 'closed' or limited classes 161–4, 202–202, 398
 - common fund approach 163–4
 - entrepreneurial lawyers 160–61, 191–2
 - expense of 205
 - free riders, discouraging 201, 398
 - institutional investors, role of 193
 - introduction of 160, 189
 - opt-in approach 398

- opt-out approach 162, 196–7, 200–201, 398
- private contract approach to funding 160
- robust class action regime 189
- commercial litigation funders 139, 147, 398
 - access to justice, and 204–7
 - adverse costs orders, and 190, 398
 - conflict of interests 209
 - degree of control in litigation 148, 203–4
 - dominant role of 189
 - funded class actions commonplace 189
 - funder philosophies 202–4
 - future of 209–10
 - growth in 190
 - IMF as change agent 202–3
 - IMF as financial service license holder 208–9
 - institutional investors, building relationships with 202
 - legislation, controlling 207–8
 - licensing of funders 208–9
 - negative impact of 205–6
 - pro bono* work 206
 - regulation of 148, 207–9
 - role contested 147
 - securities class actions 207
- conditional fees 205
- contingency fees prohibited 139, 190
 - access to justice, and 205
- cost-shifting rule applying 139
- Multiplex litigation 139, 190, 191–8
 - access to justice issues 196–7
 - attorneys and private funders 145
 - background/overview 191–4
 - class lawyers, challenge to conduct of 198
 - ‘closed’ class 161–2, 163
 - commercial litigation funder 139, 191, 192, 201
 - control of the litigation 204
 - costs 139
 - entrepreneurial lawyering 191–2
 - facts of 139, 191–2
 - funding arrangements, challenges to 194–7
 - institutional investors unwilling to be lead plaintiff 193
 - judicial regulatory role 148
 - lead plaintiff, finding 143, 155, 192–3
 - regulation of commercial litigation funding: satellite litigation 194–8
 - settlement of 139, 190, 194, 197–8, 202, 206
 - trans-substantive class actions 7
- barratry, doctrine of 145
- Belgium 13–14
 - class actions exclusively for consumer protection 7
- Lernout & Hauspie (L&H) litigation 299–318
 - associations, role of 308–9
 - background 261–2, 299–301
 - civil claimants 268–9, 306–7
 - civil claimants, representation by associations and 307–9
 - co-mingling of public and private processes 268–9, 401
 - corporate defendants not liable 262, 274, 304
 - criminal investigation/trial 261–2, 268, 274, 302–3, 304–5
 - defendants, role of 310–12
 - fraud, finding of 304
 - funding and financing 313
 - judicial management: before trial 313–14
 - judicial management: during trial 314–16
 - ‘language development companies’ and L&H 303–4
 - lessons from 317–18
 - multiple courts, involvement of 265
 - other defendants, findings against 304–5
 - outcome 303–5
 - piggybacking civil claimants 268–9, 306–7

- plaintiffs, government as 264, 266
 - procedural options for mass claims 307–8
 - public prosecutor 264, 312–13, 318
 - revenue, nature of 303
 - rise and downfall of L&H 301–2
 - US class actions 316–17
- no class action procedure 17
- standing 318
- BP Deepwater Horizon litigation *see* *under* United States
- Brazil 13–14
 - ADESF litigation 24, 51–67
 - ADESF founded to bring 24, 29, 35, 52–3, 57
 - collective litigation challenging power structures 401, 402
 - compensatory/moral damages order reversed on appeal 24
 - coordinating political/public relations activity 29–30
 - defendants, well-funded and well-organized nature of 30
 - expert evidence 62–3
 - facts of 24
 - first round for ADESF 62–4
 - global movement by advocacy organizations, as example of 29–30
 - impact of litigation 66–7
 - individuals v. multi-national corporations, as example of 29–30
 - informal network assisting/sharing costs 29, 35, 59–60, 62
 - litigation strategy, defendants' 60–62
 - media coverage 24, 35, 36, 52, 63, 67
 - nature of claim 24, 29, 57–8
 - other consumer associations joining 65
 - outcome unsuccessful for plaintiffs 24, 30, 36, 38
 - reversal of fortunes for ADESF/ appeal 64–6
 - standing/ad hoc approved entity model 38, 58, 62
 - structural measures against tobacco products following 38
 - anti-tobacco campaigning
 - advantages of litigation 67
 - litigation, surge in 52, 54, 56, 58–9
 - mass media campaigns 67
 - multi-pronged strategies against big tobacco 66–7
 - political lobbying 58, 59
 - pressure on government agencies/regulatory action 66–7
 - public awareness 58, 59, 67
 - big tobacco and their litigation
 - strategy in Brazil 60–62
 - individual treatment of cases 61
 - no settlement strategy 61–2, 67
 - resources of large companies 60–61
 - standing rules, effect of 62
 - class action procedure
 - erga omnes* effect of liability 56, 363
 - opt-out approach 363
 - Consumer Defense Code (1990)
 - 55–6, 398
 - burden of proof 60
 - costs 60
 - diffuse and collective rights 55–6
 - erga omnes* effect of decisions 56, 363
 - individual-homogenous rights 56
 - procedural benefits granted to consumer associations 60, 62
 - standing 58, 62
 - economic importance of tobacco industry 52
 - landscape of consumer collective litigation 55–7
 - Consumer Defense Code (1990) 55–6
 - popular actions in public interest 55
 - tobacco control policies 52–3
- Buncefield mass disaster litigation *see* *under* United Kingdom
- Canada 13–14
 - Atlas litigation 140, 237–40

- agency problems/conflicts of interest 397
- attorneys sharing carriage of action 145, 239
- contingency fees 146, 159, 232, 240, 246–9, 397
- entrepreneurial litigation 244
- facts of 140, 237–8
- public funding 140, 159
- representative plaintiff, recruiting 155, 158, 237–9, 241
- settlement of 140, 239–40
- strike out application 239
- civil litigation/compensation, deterrent value of 271
- class actions
 - access to justice objectives 232, 244, 253–4
 - adoption of 157
 - adverse costs, risk of 233
 - behavior change as goal of 271
 - certification 233, 242, 251
 - class attorneys 159
 - clear sailing provision 246
 - collective litigation challenging power structures 401, 402
 - commencement of 233
 - common fund approach 160
 - contingency fees 139, 157, 159, 234, 240–41, 244–50, 254
 - contingency fees, approving 244–46
 - cost-shifting 157–8
 - costs 250–53
 - discontinuing 233–4
 - entrepreneurial lawyers/litigation 232–3, 240–44
 - fees of class attorneys 233, 234
 - free rider problem, eliminating 398
 - incentive payments to class representatives 154
 - indemnities against adverse costs 153, 251, 252
 - multipliers 232, 254
 - private/commercial litigation funders 147–50, 159, 233, 252–3
 - public funders 149, 150, 159, 233, 252, 398
 - representative plaintiffs 157–8, 233, 241–4
 - settlement 233–4
 - trans-substantive class actions 7
- commercial litigation funders 147, 150, 159, 233
 - degree of control in litigation 148
 - emergence of 252–3
 - regulation of 148–9, 253
- entrepreneurial litigation 240–44
 - absent client phenomenon 243–4
 - certification test, requirements of 242
 - control of litigation with lawyers 243
 - court's approach to representative recruitment 242–3
 - monitor, little incentive to 243
 - representative plaintiffs, active recruitment of 241–3
 - seeking viable class actions 241
- Hislop litigation 140–41, 234–7, 404
- agency problems/conflicts of interest 397
- appeal 235
- attorney and class members 145
- contingency fees 240, 248–50, 397
- costs 141
- entrepreneurial litigation 244
- facts of 140–41, 234–5
- fees to class counsel, issues with 141, 235–7
- representative plaintiff, recruiting 158, 241
- litigation, cost of 232
- case management *see* judicial case management
- Chile 13, 15
 - class action procedure 363–4
 - erga omnes* effect of liability 363
 - opt-out approach 363
 - provisions preventing flood of private litigation 363
 - SERNAC's broad gatekeeping powers 363–4
 - La Polar litigation 263, 370–79

- agency problems 395
- assessment of SERNAC's behavior 379–82
- class action by SERNAC 371, 372, 373–4
- class counsel's strategy 373–5
- collective mediation 270, 370–71, 372
- compensation 273, 275
- facts of 263, 270, 370, 371–2
- criminal prosecution indicting executives 264
- entrepreneurial attorney as class counsel, appointment of 270
- fraud 371–2
- intersection of public and private processes 270
- media coverage, effect of 390
- prosecution of public class action 270
- rescue of company, attempted 372–3
- settlement 270, 275, 375–6
- settlement, SERNAC's involvement 376–9
- SERNAC
 - broad gatekeeping powers 363–4
 - class actions role 263, 363–4
 - effective control over private litigation 364
 - extractive power over private enforcement 364
 - ousting private lawyers 267
 - standing 267
- VTR litigation 263, 364–70
 - admissibility of class complaint 367–8
 - assessment of SERNAC's behavior 379–82
 - class complaint, commencement of 365–6
 - compensation 273
 - defendant's compensation strategy 368, 369–70
 - facts of 263
 - individuals switching between public and private roles 266
 - origins 364–5
 - SERNAC's involvement 366–7, 368
 - Civil Action, A* (film) 29
 - civil law jurisdictions 6
 - class actions 3
 - standing in class actions 7
 - civil litigation, deterrent value of 271, 321
 - claims funds 45–9
 - 9/11 Victim Compensation Fund 35, 45–6, 48, 396
 - Black Lung Program 46
 - concerns about fund distribution criteria 46
 - concerns about lack of independence of claims administrators 46
 - concerns about lack of informed consent 46, 47
 - corporate social responsibility, and 46
 - cultural injury, assuaging 47–9
 - nature of claim fund 45
 - private claims funds 46
 - public claims funds 45–6
 - quasi-private claims funds 46
 - types of 45
 - class actions
 - alternatives to *see* alternatives to class actions
 - certifying claim fit for 6
 - claims not formally before court/ 'absent parties' 6
 - class members' interests represented by one/few 6
 - common law and civil law regimes, in 3
 - Constitutions or statutes granting class action rights 3
 - costs *see* costs/adverse cost risks; economic enablers
 - damages value, effect of 9
 - due process, class members' right to 6
 - economic enablers *see* economic enablers
 - effect of 6
 - entrepreneurial lawyers *see* entrepreneurial lawyers
 - global spread of 4

- individual collective interests, protecting 6
- informal combination of rules 171
- legal financing shaping collective litigation 397–9
 - see also* economic enablers
- mass claims, dealing with 6
- meaning of 3
- names for 3
- notification to potential class members 6
- obstacles to 170–71
- ‘opt-in’ jurisdictions 8
- outcome of suit binding class members 8
- pleading standards, effect of 9
- private dispute resolution/courts not equipped to deal with 4
- protecting individual collective/ ‘diffuse’ interests 6
- public funders *see* public funders
- relief granted, nature of 8
- representative plaintiffs *see* representative plaintiffs
- small numbers of 9
- standing *see* standing
- trans-substantive class actions 7
- class actions, controversies around 9–11
 - absence of empirical data 10
 - aggregation, impact of 10, 272
 - conflict of interest problems 1, 129, 131
 - qualitative evidence, lack of 11
 - qualitative empirical gap, filling 11–18
 - representative litigation, issues around 11
 - rules and practices, controversy over 9–10
- class actions in context 387–409
 - future scholarship 406–8
 - lessons for policy-makers 388–406
 - agency problems, inherent nature of 393–7
 - collective litigation challenging power structures 401–2
 - collective litigation procedures, differences in 388–9
 - globalization of law shaping mass litigation 404–5
 - legal financing shaping collective litigation 397–9
 - litigation and regulation
 - symbiotically related 399–401
 - mass claims incentivising legal adaptation 391–3
 - mass claims, no one size fits all response to 405–6
 - mass media setting stage for mass claims 389–91
 - process outcomes turning on personalities as well as law 403–4
- collective litigation
 - culture of *see* culture of collective litigation: comparative analysis
 - global landscape of 3–9
 - legal financing shaping 397–9
 - see also* economic enablers
 - potential future paths for *see* potential future paths for managing collective redress
 - public dimension of *see* public dimension of private collective litigation
 - see also* class actions
- commercial funders 146–9
 - ‘access to justice’ value of 149
 - budgets 150
 - consumer protection 148
 - degree of control in litigation 148, 150
 - factors creating gaps in class action financing 147
 - increased presence as class action enablers 146–7
 - limiting exposure to adverse costs 150
 - purpose 149
 - regulation of 148–9
 - see also under* individual countries
- common law jurisdictions
 - class actions 3
 - standing in class actions 7, 37

- compensation
 - deterrent effect of 271–2
 - compensation function of adverse costs 154
 - ‘compensation matrix’ in administrative schemes 5
- conflicts of interest
 - class actions 1, 129, 131, 167, 182–3
 - commercial funders, and 209
 - incentive payments, and 156
 - Special Purpose Vehicles 131
 - contingency fees 9, 151–2, 154, 240–41
 - conflict of interest, and 182–3, 249
 - compensating lawyers for costs and risk of losing 152
 - effects of
 - ensuring entrepreneurial lawyers as primary enablers 154
 - incentive, as 241
 - fees payable from common fund 151, 152
 - nature of 241
 - non-contingent fees 151, 152
 - setting contingent fees
 - input based/lodestar fees 151, 152
 - output based fees 151, 152
- costs/adverse cost risks 9
 - cost shifting 152–5
 - compensation function of adverse costs, importance of 154
 - complicating search for representative plaintiff 154–5
 - contingency fees, and 154–5
 - debate about utility of maintaining rule in class actions 154
 - deterrent effect of 8, 153, 233, 252
 - funding mechanisms, creation of 153
 - increasing incentive payments to class representatives 153
 - indemnities against adverse costs 153, 251, 252
 - ‘loser pays’ rule 8
 - purpose of 152–3
 - representative plaintiff bearing adverse costs risk 8
 - private or public funding to mitigate adverse cost risk 8
 - legal aid 9
 - legal expenses insurance 9
 - speculative/contingent fees 9
 - third party litigation financiers 9
 - see also* economic enablers
 - see also under* individual countries
- courts
 - burden on 45
 - due process requirements 6, 42
 - judicial case management *see* judicial case management
 - media, and 43–5
 - judiciary refraining from involvement with 44
 - role in adjudication of mass claim disputes 42–3
 - UK/England
 - Costs Judges 325
 - cost management powers 325
 - informal ad hoc strategies 6
 - judicial case management 17, 325–6, 339, 389
 - media, and 44–5
 - US
 - judicial case management 17, 43
 - media, and 44
 - role of judge increasingly active 44–5
 - websites, publication of cases on 44
- crisis management in law 40–42
 - large corporations managing media 40–41
 - law firms developing crisis management practices 41–2
 - lawyers with previous government experience 41
 - preventative work with clients 42
- cultural injury, claims funds assuaging 47–9
- cultural power relationships and collective litigation 27
- individual plaintiffs v. big corporations 29–30
 - Brazilian tobacco litigation 29–30
 - empowering individuals 29
 - popular culture representations 29

- individuals/regulated industries v. public regulators/State 30–32
 - individuals and the State 30–31
 - regulated company and regulator 31
 - State/regulator and insurance industry/policyholders 31–2
 - long-standing associations v. ad hoc drivers of collective litigation 32
- culture of collective litigation:
 - comparative analysis 23–49
 - culture of collective litigation 27–40
 - agency issues *see* agency issues in class and group litigation
 - cultural power relationships *see* cultural power relationships and collective litigation
 - media, role of *see* media, role of meaning of culture 17, 23
 - overview of case studies 24–7
 - potential future paths *see* potential future paths for managing collective redress
- Deutsche Telekom litigation *see under* Germany
- Deepwater Horizon litigation *see under* United States
- discrimination/sexual orientation litigation *see under* Canada
- economic enablers 137–67
 - Australia 160–64
 - ‘closed’ or limited classes 161–4
 - commercial litigation funders 161
 - entrepreneurial lawyers 160–61
 - Canada 157–9
 - class attorneys 159
 - public and private funders 159
 - representative plaintiffs 157–8
 - commercial funders 146–9
 - ‘access to justice’ value of 149
 - budgets 150
 - consumer protection 148
 - degree of control in litigation 148, 150
 - factors creating gaps in class action financing 147
 - increased presence as class action enablers 146–7
 - limiting exposure to adverse costs 150
 - purpose 149
 - regulation of 148–9
 - economic viability of collective litigation scheme 137
 - entrepreneurial lawyers 144–6
 - agency issues 145–6
 - aggregation essential for rendering claims marketable 144, 272
 - aversion to lawyer-initiated litigation 145
 - class attorney as mix of public and private 144
 - mitigating agency problems 146
 - reluctance to entrust public cause to private hands 146
 - institutional variables affecting selection of enabling agent 151–5
 - attorney contingency fees 151–2
 - cost-shifting 152–5
 - Israel 164–7
 - class attorneys 166
 - public funding 166–7
 - representative plaintiffs 165
 - legal financing shaping collective litigation 397–9
 - mapping the framework 155–67
 - Australia 160–64
 - Canada 157–9
 - Israel 164–7
 - United States 155–7
 - overview of case studies 137–42
 - public funders 149–51
 - budgets 150
 - commercial litigation funders, and 149–50
 - constrained by enabling statutes and regulations 150
 - no input into litigation 150
 - pro bono* work by lawyers 150–51
 - public interest, considering 149–50
 - purpose 149
 - state facilitating class actions by 149

- representative plaintiffs 142–4
 - aggregating claims, advantages of 142, 272
 - class members' information, importance of 142–3
 - class members with high stakes as lead plaintiff 143
 - class representative, role of 142–3
 - free riding issues 142
 - incentive issues 142
 - meaningful representation, means of achieving 143–4
 - non-profit organization as lead plaintiff 143
 - scrutiny of class attorney/certification requirements 143–4
- United States 155–7
 - class attorneys 156–7
 - representative plaintiffs 156
 - third party funders 157
- economic, legal and cultural changes 4
 - 'legal transplants' 4
 - increased frequency of mass claims as reason for 4, 6
 - sources of mass injury and environmental damage 4
- England *see* United Kingdom/England
- entrepreneurial lawyers 144–6, 240–44
 - absent client phenomenon 243–4
 - agency issues 145–6
 - aggregation essential for rendering claims marketable 144
 - aversion to lawyer-initiated litigation 145
 - class attorney as mix of public and private 144
 - control of litigation with lawyers 243
 - mitigating agency problems 146
 - monitor, little incentive to 243
 - negative and positive connotations 191
 - reluctance to entrust public cause to private hands 146
 - representative plaintiffs, active recruitment of 241–3
 - seeking viable class actions 241
- environmental cases
 - oil pollution *see* BP Deepwater Horizon litigation *under* United States
 - water pollution *see* MTBE litigation *under* United states
- Erin Brockovich* (film) 29
- European Union Recommendation on Collective Redress 3
 - agency issues 132
 - standing 37
- Feinberg, Kenneth 26, 49
 - claims administration work 26, 49 106, 113
 - 9/11 Victim Compensation Fund 35, 48, 106, 112
 - BP Deepwater Horizon claim fund 26, 35, 48, 94, 403
 - administration of fund 106–8
 - building trust in town hall meetings 108–9
 - challenges 106
 - compensation for Feinberg from BP 110–11
 - neutrality/independence, concerns about 46, 110–11, 396
- free riding 142
 - discouraging 201, 398
 - fairness and equality of proceedings, and 89–90
- funding class actions *see* economic enablers
- Germany 13, 15
 - Deutsche Telekom litigation 279–97, 389
 - background 260–61, 279–80
 - court not capable of dealing with numbers of claims 282–4
 - economic context 281–2
 - entities with public and private dimensions 266–7
 - facts of 260–61
 - intersection of public and private processes 269
 - legal context 280

- legal expenses insurance funding 261, 283
- media coverage, effect of 390
- model case proceedings/KapMuG 265, 279, 284–7, 293–4, 388
- multiple courts, involvement of 265–6
- public prosecutors initiating proceedings 264, 400–401
- US proceedings, relation to 261, 285–6
- Deutsche Telekom litigation before higher courts 286–93
- first decision 290–91
- individual cases to model procedure 286–7
- model procedure before Appellate Court 288–90
- plaintiffs win before Federal Court of Justice 291–3
- Deutsche Telekom litigation, legacy of 293–7
- mass litigation on political agenda 293–4
- plaintiffs' bar, accelerated creation of 280, 294–6
- shareholders' culture in Germany, frustration regarding 296–7
- social relevance of litigation, change in perception of 280
- fees/costs
 - adverse costs under loser pays principle 280, 282
 - contingency fees prohibited 282
 - high court and attorney fees 282
- group/collective litigation 6
 - association suits 280
 - investor claims 17
 - no collective litigation instrument 280
 - no discovery in civil procedure 280
- legal expenses insurance 283
- mass claims incentivising legal adaptation 392
- group litigation procedures 4, 5–6
 - decisions on common issues applied to all claims 5–6
 - final decision on merits of individual claim 6
- Gulf Coast Claims Facility *see under* United States
- Hislop litigation *see under* Canada
- indivisible collective/diffuse interests 6–7
 - declaratory/injunctive relief sought 6
 - indivisible interest of specific group or public at large 6
- informal ad hoc strategies 6
- 'case management', as 6
- insurance company, collapse of *see* *Vie d'Or* litigation *under* Netherlands
- Israel 13, 15
 - class actions 213–15
 - adoption of 213
 - basic features of 213
 - class attorney fee 224
 - class attorneys 166, 224
 - class certification 165
 - commercial litigation funders 147
 - common fund approach 160
 - contingency fees 139, 213
 - general class action statute 7
 - incentive payments to class representatives 154, 165
 - indemnities against adverse costs not permitted 153
 - introduction of 164
 - new Class Action Law 214, 224
 - opt-out provision 213, 214
 - procedure not trans-substantive 7
 - public funders 149, 150, 166–7
 - rarely proceeding to trial and judgment 215, 221
 - representative plaintiffs 165, 213
 - securities litigation, requirements for 214
 - substance-specific class action procedures 214
 - substantive laws, incorporated into 213–14
- Reichart Industries/Shemesh litigation 139–40, 212–31, 404
- agency problems 146, 394

- appeals (2002–1012) 223–4, 228
 - background 212–13, 215–16
 - class attorney fee 224–7
 - class attorneys, concerns about 218
 - class attorney's relentless litigation strategy 212–13, 228, 229–30
 - class certification 218–19
 - class representative, challenge to 217–18
 - damages, method of calculation of 227–8, 229
 - distribution to the class 227–8, 229
 - epilogue 228–31
 - facts of 139–40, 215–16, 221
 - fraudulent scheme, exposure of 221–2
 - lead attorney 218
 - litigation, 2002 resumption of 221–3
 - prolonged litigation, effect of 140, 229
 - settlement 140, 212–13, 218–21, 227
 - settlements (1997–2002) 218–21
 - start of litigation 216–18
 - trial and judgment 215
 - unprecedented issues, addressing 214
- judicial case management 42–3
- UK 17, 325–6, 389
 - Buncefield, in 320–21, 331, 338–9, 388–9
 - GLO, and 339, 389
 - US 17, 43
- labor/union litigation *see under* Taiwan
- lawyers, entrepreneurial *see under* entrepreneurial lawyers
- legal financing *see* economic enablers
- Lernout & Hauspie litigation *see under* Belgium
- maintenance and champerty 145, 148
- media 27–8, 32–6, 51, 389–91
- courts, and 43–5
 - courts communicating with media 44–5
- cultural injury, facilitating wide sharing of 47
- drawbacks of media engagement with litigation 33
- large corporations, and public relations departments 40–41
- mass media affecting development of mass litigation
- disseminating notices and information 33
 - enabling public to follow pending litigation 33
 - investigation of possible misconduct 32
 - lawyers' media strategy, effect of 33
 - public outreach efforts, facilitating 33
 - publicizing potential claims/ expanding scale of litigation 32–3
- mass media coverage of cases
- effects of 34–6
 - shaping defendants' strategic decisions/conduct 33–4
 - reputational damage 272
- misrepresentation litigation *see under* Australia; Canada; Israel
- Multiplex litigation *see under* Australia
- Netherlands, the 13, 15, 17
- business and political culture on mass disputes, influence of 132–4
- dual role of State 133
- political interference with resolution of mass disputes 133
- state's policy on consumer protection inconsistent 132
- Claim Code, establishment of 131
- collective actions
- collective settlement procedure, extension of 7
 - declaratory and injunctive relief 122
 - introduction of 122
 - reliance on State interference 133
 - resources, need for 129

- Special Purpose Vehicles 122, 128–32
 - standing 122, 131
 - types of organizations bringing actions 122
- courts/judges, media and 44–5
- Royal Dutch/Shell Transport litigation 138, 178–81, 398–9
 - see also under* United States
- Special Purpose Vehicles, role and functioning of 122, 128–32
 - accountability and legitimacy issues 131–2
 - advantages of 129
 - agency issues 131–2
 - civil society reliance on State supervisory/enforcement powers 128–9
 - competing Special Purpose Vehicles 129–30, 131
 - conflicts of interest 131
 - group interests to be sufficiently guaranteed 131
 - issues raised by 129–32
 - need for resources 129
 - new market in legal services, as 130
 - remuneration of Board members 130–31
- trans-substantive class actions 7
- Vie d'Or litigation 26–7, 117–33, 403–4
 - ad hoc association required 32
 - agency problems 395
 - Association of Insurers 119–21, 125, 127, 132
 - background 26, 117–18, 122–3
 - bankruptcy of Vie d'Or, causes of 120, 130
 - bankruptcy of Vie d'Or, effect of 117–18
 - concerns about Vie d'Or's marketing and pricing practices 119
 - conflict of interests 129
 - costs 123, 127–8
 - cultural connectedness, claimants as community and 47
 - facts of claim 26, 125–6
 - formation and business of Vie d'Or 118–19
 - industry failure to rescue Vie d'Or, reasons for 121
 - industry failure to rescue Vie d'Or, reasons for 121
 - initial distrust of Vie d'Or Foundation 123–4
 - Insurance Regulator, role of 119, 121–2, 123–4, 127–8, 130
 - investigations into Vie d'Or 119
 - litigation, history/management of 124–8
 - loss to policyholders from Vie d'Or bankruptcy 117, 119–20
 - mass claims incentivising legal adaptation 391–2
 - media coverage/negative publicity, effect of 34, 117
 - nature of claim 26–7
 - outcome unsuccessful for plaintiffs 27, 31, 125–6, 127
 - Regulator's wish to control plaintiff Foundation 27, 32, 124, 130
 - regulatory action following 27, 132, 400
 - rise and fall of Vie d'Or 118–22
 - settlement of claims/settlement fund 27, 31, 34, 38, 46, 117–18, 126–8
 - Special Purpose Vehicle, need for 123
 - standing: ad hoc approved entity model 38, 123
 - State/regulator and insurance industry/policyholders, as example of 31–2
 - stronger regulatory framework following 31–2
 - Vie d'Or Foundation as plaintiff 27, 32, 38–9, 47, 121, 122–4, 130
- non-disclosure litigation *see under* Australia; Israel
- Obama, President Barack

- BP CEO, meeting 35, 48, 105
- creation of claims fund 26, 35, 44, 46, 48, 94, 104–6, 403
- endorsement of 108
- oil pollution claims *see under* United States
- 'opt-in' jurisdictions 8
- 'opt-in' jurisdictions 8
- potential future paths for managing
 - collective redress 40–49
 - case management and interacting with media 42–5
 - courts and media 43–5
 - judicial case management 42–3
 - crisis management *see* crisis management in law
 - culture and claims funds *see* claims funds
- private attorneys 132, 144–6, 399
- public dimension of private collective litigation 259–77
 - accountability, compensation and behaviour change 271–6
 - compensation, deterrent effect of 271–2
 - redress 271, 273–4
 - regulatory enforcement 274–6
 - remedial options 271–2
- many roles of public actors 264–8
 - criminal prosecutors, role of 264–5
 - entities with public and private dimensions 266–7
 - funding of litigation, government roles in 267
 - government institutions at cross-purposes 265
 - individuals switching between public and private roles 266
 - multiple courts, involvement of 265
 - plaintiffs and defendants, government as 264, 266
 - prospective regulatory roles of government institutions 264–5
 - public sector entities, roles of 264
- mixed nature of process 268–70
 - co-mingling of public and private processes 268–70
 - mass injuries evoking special public responses 268
 - public decision-making shaping private litigation 268
 - overview of case studies 260–63
 - public and private enforcement connected nature of 259–60
- public funders 149–51
 - budgets 150
 - commercial litigation funders, and 149–50
 - constrained by enabling statutes and regulations 150
 - no input into litigation 150
 - pro bono* work by lawyers 150–51
 - public interest, considering 149–50
 - purpose 149
 - state facilitating class actions by 149
 - see also under* individual countries
- qualitative empirical gap, filling 11–18
 - 'case study' method 11–12
 - common interview protocol 12–13
 - cultural factors, importance of 17
 - legal financing rules, importance of 17
 - public legal actors, importance of 18
- Reichart Industries/Shemesh litigation *see under* Israel
- representative plaintiffs 142–4
 - adverse costs risk, bearing 8
 - aggregating claims, advantages of 142, 272
 - class members' information, importance of 142–3
 - class members with high stakes as lead plaintiff 143
 - class representative, role of 142–3
 - free riding issues 142
 - incentive issues 142
 - meaningful representation, means of achieving 143–4
 - non-profit organization as lead plaintiff 143

- scrutiny of class attorney/certification requirements 143–4
 - see also under* individual countries
- Royal Dutch/Shell Transport litigation
 - see under* United States
- securities/shareholder litigation *see under* Canada; Germany; Israel; Taiwan; United States
- sexual orientation/discrimination litigation *see under* Canada
- Shemesh/Reichart Industries litigation
 - see under* Israel
- standing 7, 8
 - agency issues, and *see* agency issues in class and group litigation
 - civil law jurisdictions 7
 - common law jurisdictions 7, 37
 - European Union Recommendation on Collective Redress 37
 - models of
 - ad hoc approved or certified non-profit entities 38–40
 - entrepreneurial lawyer 37, 39
 - governmental agencies 37, 38, 39–40
 - long-standing non-profit associations/designated entities 32, 37–8, 39–40
 - public officials 267
 - see also under* individual countries
- Taiwan 13, 15
 - Civil Procedure Code 70
 - class actions 71, 90–91
 - lack of consumer association resources, effect of 90–91
 - representative suits 70
 - compensation on lawsuits for public interest associations, ban on 71, 90, 91
 - Consumer Protection Act (1994)
 - class actions 70–71
 - scarcity of class actions under 90
 - labour class/small claim action 25, 72–8
 - appeal 76–7
 - background 72–3
 - collective litigation challenging power structures 401–2
 - defences 75–6
 - dispute and underlying battle 73–4
 - equal treatment, demands for 72–3
 - facts of case 30–31
 - funding/legal aid 74–5, 78, 90
 - individuals v. State, as example of 30–31
 - long term battle between labor union/government 25, 90
 - nature of claim 25, 30, 74–6
 - outcome successful for plaintiffs 31
 - representation 74–5
 - small-claims class action
 - procedure used 30
 - standing 37–8
 - unique context of litigation 90
 - Union leaders fired after litigation 25, 31, 38, 78
 - victory, backfire after 77–8
 - new type of class action, victims associations as 91
 - public interest associations, costs of class actions and 90
 - securities class action originating in IPO 25, 79–90
 - background 79–80
 - class action, SFIPC's decision to initiate 82–4
 - costs 88, 89–90
 - defendants' position and strategy 85
 - facts of 25, 79–80
 - fairness and equality of proceedings/free riding 89–90
 - filing two separate class actions 84–5, 86–7
 - institutional investor's lawsuit 80–81, 89
 - KYEC's IPO 79
 - litigation process and outcome 86–8
 - media attention propelling litigation 36
 - nature of claim 31
 - new style of class action, as 89

- outcome 36, 87–8
- public and private enforcement of securities laws 81–2
- public-funded securities class actions, peculiarities of 88–90
- reasons for bringing proceedings 82–3
- regulated company and regulator, power relationship between 31
- standing 38
- securities laws, enforcement of 81–2
 - regulatory enforcement by SEC 81
 - SIFTP Act 71, 81–2
- SFIPC/SIFTP Act (2003) 81–2
 - copiousness of class actions 90
 - funding 81, 90
 - operation of SFIPC 81
 - purpose/functions 81, 82
 - securities class actions 71, 82
- standing
 - broadening category of litigants with stand, proposal for 91
 - governmental agency model 38
 - long-standing non-profit association model 37–8
 - victims, associations of 91
- tobacco litigation *see under* Brazil
- Toyota unintended acceleration litigation *see under* United States
- trans-substantive class actions 7
- union litigation *see under* Taiwan
- United Kingdom/England 13, 15
 - Buncefield mass disaster litigation 262, 320–41
 - civil claims 326–33
 - damage caused by explosion and fire, nature of 323–4
 - explosion and fire 322–3
 - facts of 262, 320, 322–4
 - local authorities as claimants 264, 266
 - media coverage, effect of 390
 - overview 320–21
 - regulatory investigation and enforcement proceedings 333–8
 - three separate processes with different goals 270, 338
 - Buncefield mass disaster litigation:
 - civil claims 326–33
 - chronology of litigation 328–33
 - compensation claims/negotiations 262, 273, 321, 323–4, 332–3, 338
 - costs issues 333
 - disclosure 331
 - insurers settling claims 327, 328, 340
 - judicial case management of 320–21, 331, 338–9
 - parties and claims: organising the groups 326–7
 - settlement of claims 332–3, 339–40
 - strategic decisions by oil companies 327–8
 - Buncefield: regulatory investigation and enforcement proceedings 333–8
 - Competent Authority 333–4
 - finances 275–6, 335–6
 - investigation team 334–5
 - lessons learnt for future behaviour 337–8
 - prosecutions 335–7
 - public oversight response 334
 - public prosecutors initiating proceedings 264
 - regulatory response 334–5
 - reports, production of 335, 337–8
 - vigorous investigatory and enforcement process 275–6
- Civil Procedure Rules
 - case management approach to litigation 326, 340
 - Jackson review 325
 - negotiated settlement, encouragement of 321, 324–5, 340
 - pre-action protocols 325
 - procedure/commencement of litigation 325
 - traditional approach, Woolf reform of 324

- class actions exclusively for competition claims 7
- common law legal system 324
- courts/judges
 - Costs Judges 325
 - cost management powers 325
 - informal ad hoc strategies 6
 - judicial case management 17, 325–6, 339, 389
 - media, and 44–5
- Environment Agency, powers of 340–41
- group litigation in England and Wales 6, 17, 324–6
 - adversarial procedure 324
 - case management approach to 326
 - Civil Procedure Rules 324–5
 - Group Litigation Order 320, 325–6, 339
 - mass claims 325–6
 - mass product liability cases 325
 - no class action procedure 17
- judicial case management 17, 325–6, 389
 - Buncefield, in 320–21, 331, 338–9, 388–9
 - GLO, and 339, 389
- tobacco litigation 52
- United States (US) 13, 15
 - ‘American fee rule’ 155, 156
 - BP Deepwater Horizon litigation 26, 92, 104–13, 389
 - agency problems 396
 - background 94, 104
 - claims administration centralized 35
 - claims administrator, challenge to independence of 46
 - class action supplanting claims fund 26, 35, 46, 111–13
 - cultural destruction, avoiding risk of 105–6
 - emergency and interim payments 107, 112
 - environmental recovery of Gulf area 113
 - extent of pollution 94, 104
 - facts of 26, 34–5, 94, 104
 - Feinburg’s administration of fund 106–8
 - Feinburg’s independence, concerns about 110–11, 396
 - felony misconduct, BP’s admission of 112
 - fraudulent claims 109–10, 113, 389
 - fraudulent claims, media coverage drawing 33, 35, 95, 109, 113
 - fully informed consent to settlement, concerns about 47
 - Gulf Coast Claims Facility 26, 35, 44, 46, 95, 104–6, 112
 - informal business practices, expectations of 109, 14
 - insurance claims 106–7
 - mass claims incentivising legal adaptation 392–3
 - media coverage, impact of 93, 95, 104–5, 106, 113, 390
 - penalties on BP 112
 - President Obama and creation of claims fund 26, 35, 44, 46, 48, 94, 104–6
 - pro bono* legal assistance available 108
 - prosecution of fraudulent claims 94, 110, 113
 - regulatory entities, review of efficacy of 113, 399–400
 - review of Facility’s treatment of claims by US Coastguard 113
 - strict liability of BP 34
 - town hall meetings and Gulf Coast Claims facility outreach 108–9, 110
- civil litigation/compensation, deterrent value of 271
- class actions
 - adoption of 155
 - adverse costs, no risk of 156
 - aggregated monetary claims 6–7, 155, 272
 - ‘American fee rule’ 155, 156
 - arbitration clauses forbidding collective dispute resolution 9
 - attorney fees in successful class actions 145, 147

- attorney-initiated class actions not permitted 145
- class attorneys 156–7
- class certification 157
- commercial litigation/ third party funders 147, 157
- common fund approach 160
- contingency fees 155, 182–3
- counsel's fees, deciding 183
- federal and state procedure rules, under 3, 155
- free rider problem, eliminating 398
- incentive payments limited 154, 156
- informal ad hoc strategies 6
- lead counsel 156–7, 182–3
- monitoring litigation 156
- Multi-District Litigation procedure 156–7, 388
- Plaintiff Steering Committees 156–7
- representative plaintiffs 156
- securities litigation, choosing class representative in 143, 318
- small numbers of class actions only 9
- collective interest claims 6–7
- contingency fees 139, 145, 147, 155
 - growth of plaintiff bar resulting 155, 156
 - lodestar fees 152, 155
 - percentage of fund approach 155
- cultural injury, claims funds
 - assuaging 48–9
- Deutsche Telekom litigation 261, 285–6
- Federal Rules of Civil Procedure 214
- group litigation procedures 6, 17
- judges/courts
 - judicial case management 17, 43
 - media, and 44
 - role of judge increasingly active 44–5
 - websites, publication of cases on 44
- L&H litigation 316–17
- Legal Service Corporation 150
- maintenance and champerty rules 148
- Manual for Complex Litigation 43
- MTBE litigation 342–61
 - background 262–3
 - common law claims 269–70
 - compensation 273
 - federal law 344–7, 349, 358
 - government institutions at
 - cross-purposes 265
 - impact of public and private processes 357–61
 - intersection of public and private processes 269–70
 - legal environment 344–9
 - legislative and administrative proposals 357
 - litigation: early claims 349–50
 - litigation: MTBEI 350–51
 - litigation: MTBEII 351–54
 - MTBE, nature of 343–4, 349
 - MTBE, permitted use of 269, 343
 - MTBE pollution, effects of 262, 343–4, 358
 - plaintiffs, government as 266
 - regulatory investigation of MTBE 269
 - regulatory response to pollution 262, 269–70, 275, 400
 - settlement of claims 354–6
 - state law 347–9, 358
- pro bono* work by lawyers 150–51
- Royal Dutch/Shell Transport
 - litigation 138, 389
 - agency problems 394–5
 - attorneys competing for control of class 145
 - background 171–3
 - class representative, appointment of 138, 143, 155, 173, 174, 177
 - competing class actions brought 174
 - costs 138
 - denouement 181–6
 - Dutch solution for foreign investors 138, 178–81, 398–9
 - facts of 138, 171–3
 - jurisdictional dispute 174–8
 - lawyers, paying 186–8, 398–9

- lead plaintiff counsel, appointment of 138, 143, 155, 173–4, 177
- media coverage, effect of 390
- regulatory investigations 172, 174
- settlement of claims 177–8, 182, 185–6
- special purpose foundation as lead plaintiff in Amsterdam 143–4
- start of litigation 173–4
- tobacco litigation 52
- Toyota unintended acceleration
 - litigation 25–6, 92–104, 113–14, 388, 398
 - background 93–4, 95
 - bias against Toyota, allegations of 97–8, 114
 - corporate and regulatory safety reform, ongoing 103–4
 - costs 104
 - facts of 25–6, 34, 95
 - fraudulent claims, media drawing 101, 113
 - investigations by NHTSA and Congress 93–4, 95–6, 97
 - judicial case management of 43
 - mass litigation, extent and complexity of 98–9, 114
 - media coverage, impact of 33, 34, 93, 96–8, 101–3, 113–14
 - media-created mass tort 101–3, 390
 - no problem with cars identified 94, 100–101
 - payment for reduced vehicle resale value 26, 33, 34, 37, 94, 98–9, 103
 - personal injury trial lost by Toyota 26, 94, 102
 - recall of cars 94, 95, 96
 - regulatory oversight triggered 93–4, 95–6, 99–100, 399
 - settlement of personal injury cases 26, 94, 102–3
 - standing: entrepreneurial lawyer model 37
 - vehicle modifications 95, 103, 113
 - trans-substantive class actions 7
- Vie d’Or litigation *see under* Netherlands