COLLECTIVE ACTIONS

Enhancing access to justice and reconciling multilayer interests?

This volume of essays draws together research on different types of collective actions: group actions, representative actions, test case procedures, derivative actions, and class actions. The main focus is on how these actions can enhance access to justice and how to balance the interests of private actors in protecting their rights with the interests of society as a whole. Rather than focusing on collective actions only as a procedural device, the contributors to this book also examine how these mechanisms relate to their broader social context. Bringing together a wide range of scholarship from the areas of competition, consumer, environmental, company, and securities law, the book includes contributions from Asian, European, and North American scholars and therefore expands the scope of the traditional European and/or American debate.

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COLLECTIVE ACTIONS

Enhancing access to justice and reconciling multilayer interests?

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Cases involving a large number of potential claimants have long presented difficulties to legal systems designed to accommodate disputes primarily among a small number of parties. Deterred by factors such as the costs of potential court proceedings and the imbalance of power between parties, private actors often abstain from pursuing their rights. Potential defendants who have caused significant but dispersed harm may thus escape from sanctions or liability. As a result, multiple layers of interests, or 'multilayer interests', ranging from the interests of private actors in protecting their rights on the one hand to the interests of society as a whole in deterring socially detrimental behaviour on the other, may be left unsatisfied.

To remedy this problem, various forms of collective actions have been developed. They range from group actions, in which individual actions are assembled into one procedure; to representative actions, in which an association sues on behalf of a multitude of claimants; to test case procedures, in which claimants sue in order to set a precedent for others. These various forms of collective actions aim to facilitate 'access to justice' for private actors, that is, the ability to enforce and protect one's rights through a legal process. In addition to bundling a larger number of fragmented individual interests, they are seen as a mechanism to safeguard the common interests of specific groups of claimants and of society as a whole. Moreover, collective actions are not just a procedural tool but raise a number of political, social and economic issues, for instance, balancing of interests between weaker private actors and bigger players, coordination of collective actions with enforcement efforts by public agencies, cost issues and a possible subordination of the individual for the sake of larger or collective interests.

There is intense debate among legal scholars and practitioners about whether collective actions can adequately safeguard and reconcile access
to justice with multilayer interests. This book examines the issues of collective actions in their broader historical, social, economic and political contexts, cutting across several legal fields in a variety of countries in Europe, Asia and North America, and thus going beyond approaches previously taken.
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We hope that this book will contribute to further discussions and developments of access to justice.

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Steven Van Uyt sel, Fukuoka, 2012
Mathias M. Siems, Durham, 2012
ABBREVIATIONS

AC  Appeal Cases (Law Reports)
ADR  Alternative Dispute Resolution
aff’d  affirmed
AG  Aktiengesellschaft (joint stock company)
AktG-E  Aktiengesetz-Entwurf (German Stock Corporation Act Draft)
 Ala. Cir. Ct.  Alabama Circuit Court
AMA  Japanese Antimonopoly Act
AMC  Antitrust Modernization Commission
ARC  American Radiolabeled Chemicals
ARN  Allmänna reklamationsnämnden (Swedish National Board for Consumer Complaints)
Art.  Article
Arts.  Articles
Assn  Association
BA  British Airways
BCSC  Supreme Court of British Columbia
BERR  Department for Business, Enterprise and Regulatory Reform
BGBl  Bundesgesetzblatt (German Federal Law Gazette)
BOD  Board of Directors
BOM  Board of Management
BOS  Board of Shareholders
BP  British Petroleum
c.  clause
C.D. Cal.  Central District of California
CAFA  Class Action Fairness Act
CanLII  Canadian Legal Information Institute
CAT  Competition Appeal Tribunal of the United Kingdom
CBR  Centre for Business Research
CEP  Committee on Environmental Policy (Economic Commission for Europe)
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<td>CERCLA</td>
<td>Comprehensive Environmental Response, Compensation, and Liability Act</td>
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<td>CFR</td>
<td>Code of Federal Regulations</td>
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<td>ch.</td>
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<td>CIF</td>
<td>Cost Insurance Freight</td>
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<td>Civ</td>
<td>Civil Division</td>
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<td>Civil Justice Council of England and Wales</td>
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<td>CMLR</td>
<td>Common Market Law Review</td>
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<td>Civil Procedure Rules</td>
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<td>CWA</td>
<td>Clean Water Act</td>
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<td>D&amp;O insurance</td>
<td>Directors and Officers liability insurance</td>
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<td>District Court of Delaware</td>
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<td>D. Me.</td>
<td>District Court of Maine</td>
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<td>D.C. Super. Ct.</td>
<td>Superior Court of the District of Columbia</td>
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<td>District Court of New Jersey</td>
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<td>DC</td>
<td>District of Columbia</td>
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<td>DC Cir.</td>
<td>Court of Appeals for the District of Columbia Circuit</td>
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<td>DG COMP</td>
<td>Directorate-General for Competition (European Commission)</td>
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<td>e.g.</td>
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<td>EC</td>
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<td>European Consumer Centre’s Network</td>
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<td>Abbreviation</td>
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<tr>
<td>ECE</td>
<td>Economic Commission for Europe</td>
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<td>European Convention on Human Rights</td>
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<td>European Court of Justice</td>
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<td>EWCA Civ</td>
<td>England and Wales Court of Appeal Civil Division</td>
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<td>EWHC</td>
<td>High Court of England and Wales</td>
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<td>F. Supp.</td>
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<td>F.R.D.</td>
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<td>Federal Appendix</td>
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<td>Fla. App.</td>
<td>Florida Appeals Court</td>
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<td>FPT</td>
<td>Financing Promoting Technology Corp.</td>
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<tr>
<td>FSB</td>
<td>Financial Services Bill</td>
</tr>
<tr>
<td>FY</td>
<td>Fiscal Year</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>GNI</td>
<td>Gross National Income</td>
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<tr>
<td>GRL</td>
<td>Swedish Group Proceedings Act of 2002</td>
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<tr>
<td>H. Ct.</td>
<td>High Court</td>
</tr>
<tr>
<td>HL</td>
<td>House of Lords</td>
</tr>
<tr>
<td>HM</td>
<td>His/Her Majesty</td>
</tr>
<tr>
<td>i.e.</td>
<td>id es (it is)</td>
</tr>
<tr>
<td>ibid.</td>
<td>ibidem</td>
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<td>Int’l</td>
<td>International</td>
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<tr>
<td>IPPC</td>
<td>Integrated Pollution Prevention and Control</td>
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<tr>
<td>J.</td>
<td>Judge; Justice</td>
</tr>
<tr>
<td>JFTC</td>
<td>Japan Fair Trade Commission</td>
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<tr>
<td>JOR</td>
<td>Jurisprudence on Commercial Law</td>
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### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>Jr.</td>
<td>Junior</td>
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<tr>
<td>JRS</td>
<td>Vietnamese Judicial Reform Strategy</td>
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<tr>
<td>K.K.</td>
<td>Kabushiki Kaisha (Japanese stock corporation)</td>
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<tr>
<td>Kan. Dist. Ct.</td>
<td>District Court of Kansas</td>
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<tr>
<td>KonTraG</td>
<td>Gesetz zur Kontrolle und Transparenz im Unternehmensbereich (German Corporate Sector Supervision and Transparency Act)</td>
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<tr>
<td>L.Ed.</td>
<td>Lawyers Edition</td>
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<td>L.J.</td>
<td>Lord Justice of Appeal</td>
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<td>L.JJ.</td>
<td>Lords Justice of Appeal</td>
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<tr>
<td>LCD</td>
<td>Liquid Crystal Display</td>
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<tr>
<td>LLC</td>
<td>Limited Liability Company</td>
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<td>LOE</td>
<td>Law on Enterprise</td>
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<td>LPG</td>
<td>Liquefied Petroleum Gas</td>
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<td>Ltd</td>
<td>Limited</td>
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<td>MDL</td>
<td>Multidistrict Litigation</td>
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<td>Mich. Cir. Ct.</td>
<td>Michigan Circuit Court</td>
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<td>Minn. Dist. Ct.</td>
<td>Minnesota District Court</td>
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<td>MITI</td>
<td>Japan's Ministry of Industry and Trade</td>
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<tr>
<td>MOJ</td>
<td>Ministry of Justice</td>
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<td>n.</td>
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<td>N.D.</td>
<td>Northern District</td>
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<td>NGO</td>
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<td>NOAA</td>
<td>National Oceanic and Atmospheric Administration</td>
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<td>NPO</td>
<td>nonprofit organization</td>
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<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<td>OFT</td>
<td>Office of Fair Trading</td>
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<td>OJ</td>
<td>Official Journal</td>
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<td>OPA</td>
<td>Oil Pollution Act</td>
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<td>OPEC</td>
<td>Organization of the Petroleum Exporting Countries</td>
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