

Cambridge University Press

978-1-107-03911-7 - Private Law: Key Encounters with Public Law

Edited by Kit Barker and Darryn Jensen

Index

[More information](#)

INDEX

- Abel, Richard, 333
 academic motivation, 90–1
 accidents, 291
 Adreoni, James, 166n.64
 Advertising Standards Authority, 56
Alfresh Beverages Canada Corp. v. Archer Daniels Midland Co., 362n.156
 altruism, and charity law, 165–9
Amselem (Syndicat Northcrest v. Amselem), 219n.38, 220–2
Anns v. Merton London Borough Council, 210
 Arden LJ, 299n.32, 309–10, 314–15
Ashley v. Chief Constable of Sussex Police, 33–4, 288–9, 293–4n.16, 298–301, 304, 308–17, 318
 assault and battery (trespass to the person), *see* intentional torts
Aston Cantlow v. Wallbank, 81–2
 Atiyah, Patrick, 90–1, 102
 Auld LJ, 311
 Austin, John, 122
 Australia
 cy-près distributions in class actions, 321–3, 329, 346, 349–57, 364–5
 discriminatory charitable trusts, 179
 injunctions, 343, 344
 lawyer styles, 330–2
 legal definition of charity, 150n.14
 monetary relief, 328–9, 330–2
 public benefit test for charities, 161n.39
 punitive damages, 339–40
 remedial goals of civil litigation, 325–6, 327
 Australian Law Reform Commission (ALRC), 350–1, 354–5
 autonomy (positive freedom)
 creative function of charity law, 168–9
 facilitative function of charity law, 151–3
 private law influence on human rights, 216–17
 promotive function of charity law, 154–63
Baddeley (Inland Revenue Commissioners v. Baddeley), 186–7, 189–92
Bankers Trust International Plc v. PT Dharmala Sakti Sejahtera (No. 2), 242–3
 bankruptcy law, 286–7
 banks
 public nature of, 238–41
 regulation, 235–6, 237
 Bar, Christian von, 113–14
 Barnett, Randy, 267–9
 Bastarache J, 221
Bauman v. Nova Scotia (Attorney General), 228
 Baxter, Angela, 341–2
 Beale, Hugh, 113–14
Beary v. Pall Mall Investments, 249
 Beatson, Jack, 232n.3, 263n.116
 Bebcuk, Lucian, 273, 276–7
 behavioural modification as goal of civil litigation
 approaches, 335–46
 cy-près distribution as class action remedy, 35–7, 320–4, 358–65

Cambridge University Press

978-1-107-03911-7 - Private Law: Key Encounters with Public Law

Edited by Kit Barker and Darryn Jensen

Index

[More information](#)

INDEX

367

- cy-près distribution in
 - Canada, 346–9
- bequeathal, 209, 223–30
- Berryman, Jeff, 17, 18, 35–7, 334–5
- Birks, P., 233n.6
- Blackstone, William, 122
- Bob Jones University v. United States*, 175–6, 195
- Bogart, Bill, 336
- Bona Foods v. Pfizer*, 345
- Borisova v. Minister of Citizenship and Immigration*, 343n.89
- Bramwell, George, 102n.18
- Bray v. F Hoffman-La Roche Ltd.*, 343n.84
- Brownsword, Roger, 216
- Burger CJ, 176
- business organisations,
 - see corporations
- Caillé, Alain, 166n.64
- Camerata Property Inc. v. Credit Suisse Securities (Europe) Ltd.*, 259–60
- Canada
 - Charter of Rights and Freedoms, 171, 219–20
 - cy-près distributions in class actions, 321–3, 328, 346–9, 358, 362, 364
 - discriminatory charitable trusts, 176–80, 185, 198n.129
 - expropriation legislation, 215n.28
 - human right to property, 218–22, 229
 - human rights influence on private law, 213–14
 - individual vs. group rights, 207–8n.2
 - injunctions, 342–4
 - lawyer styles, 330–2
 - monetary relief, 328, 330–2
 - punitive damages, 338–40
 - remedial goals of civil litigation, 325, 327
 - Supreme Court, 347, 348
 - testamentary clauses, 28, 225–9, 230
 - waiver of tort, 338
- Canada Revenue Agency, 187
- Canada Trust Co.*, 176–9, 195, 199–200
- Cane, Peter, 37
- Carroll, Robyn, 17, 18, 35–7, 333
- Carswell, Lord, 289, 312
- Cassa di Risparmio della Repubblica di San Marino SpA v. Barclays Bank Ltd.*, 257–9
- Cassels, Jamie, 340
- Cassino v. Toronto-Dominion Bank*, 358
- Catholic Care (Diocese of Leeds) v. Charity Commission for England and Wales*, 181, 195, 202–5
- caveat emptor* in finance law, 252–6
- Central Guaranty Trust Co. v. Lefebvre-Gervais*, 226–7
- certification of plaintiffs in class actions, 343–4
- Chambers, R., 233n.6
- Chaoulli v. Quebec (Attorney General)*, 219n.38
- charitable trusts
 - authorities dealing with discriminatory trusts, 174–81
 - and discrimination, 27, 171–4, 204–6
 - private/public distinction, 49–50
 - public element of public benefit test, 182–204
- Charities Act (2011), UK, 157–8, 198n.129
- Charity Commission, UK, 187, 190
- charity law
 - creative function, 163–9
 - facilitative function, 151–3
 - legal definition of charity, 149–50
 - legal privileges, 148–9
 - private/public interaction, 25–7
 - promotive function, 154–63
 - public benefit test, 158–63
 - purposes, 26–7, 147–50, 170
 - state officials, reasoning of, 158–63
- Cheffins, Brian, 273n.24
- Civil Code of Quebec, 212n.16, 214, 225
- civil law, testamentary clauses in, 225–7, 228–9
- Civil Marriage Act (2005), Canada, 179–80

Cambridge University Press

978-1-107-03911-7 - Private Law: Key Encounters with Public Law

Edited by Kit Barker and Darryn Jensen

Index

[More information](#)

368

INDEX

- Civil Procedure Act (2005, NSW),
Australia, 349, 351
- Clark v. University of Lincolnshire and
Humberside*, 85–6
- Clarke MR, 310, 311
- class actions
 - behaviour modification approaches,
335–46
 - cy-près distribution as remedy, 35–7,
320–4, 358–65
 - cy-près distribution in Australia,
321–3, 329, 346, 349–57, 364–5
 - cy-près distribution in Canada,
321–3, 328, 346–9, 358, 362, 364
 - definition, 320n.1
 - lawyer styles, 330–2
 - monetary relief, 328–32
 - non-class beneficiaries, 362–4
 - plaintiff remedial preferences,
332–5, 359–60
 - private/public interaction,
32–3, 35–7
 - remedies, functions of, 324–8
- Class Proceedings Act (1992), Canada,
362n.157, 362n.159
- Clive, Eric, 113–14
- codification of law, 6–7, 100
- coercion
 - as class action remedy, 325, 342–4
 - legal system, role of, 120–4
 - primary and secondary rules, 124–7
- Coester-Waltjen, Dagmar, 216–17
- Coffee, John, 274–5
- Cohen, Harvey, 162n.46
- coherence, arguments from, 77, 81–2
- collectivism, 18
- Collins, Hugh, 212, 213, 216
- Collins MR, 80
- commercial law, 29–32, *see also*
corporate law; finance law
- common law
 - duty of care, 248–50, 296
 - financial mis-selling cases, 250–6
 - medieval law, 97–100
 - modern law, 104–5
 - testamentary clauses, 227–9
- compensation, 324–5, 351–2,
360, 362–4
- competency, 130–1
- Conduct of Business Sourcebook
(COBS), Financial Services
Authority, 234–5, 251, 252–3
- conscience (integrity), 262–3
- consequentialist arguments,
77–8, 81–4
- consistency, arguments from, 77,
81–2, 83
- constitutional law
 - core competencies, 138–41
 - as public law, 285–6
 - public/private theory of legal
systems, 119, 131, 137–8, 141–2
- contract law
 - developments since nineteenth
century, 105–6
 - public/private theory of legal
systems, 119, 137–8, 142–3
- contracting out public services, 54–7
- contracts in human rights, 225n.55
- cooperation (union of primary and
secondary rules), 124–7
- Corbin, Arthur, 117, 126
- corporate governance
 - convergence in corporate law,
277–82
 - global convergence, 271–7
 - public/private distinction, alterna-
tive conception, 282–7
- corporate law
 - global convergence, 271–7
 - as private law, 267–71, 283
 - public/private distinction, 11, 30–2,
265–7, 277–82
 - public/private distinction, alterna-
tive conception, 282–7
- corporations, 7–8, 104
- cost of litigation, 330–2, 360–1
- courts
 - merging of, 101
 - as public authorities, 16–17, 89–90
- Cover, Robert, 122–3, 129
- Cowan de Groot Properties v. Eagle
Trust*, 244–5
- creative function of charity law, 163–9
- criminal law
 - as public law, 285–6

Cambridge University Press

978-1-107-03911-7 - Private Law: Key Encounters with Public Law

Edited by Kit Barker and Darryn Jensen

Index

[More information](#)

INDEX

369

- public/private theory of legal systems, 119, 137–8, 141
- state role, 270
- vindication of rights, 303–4
- Cullen v. Chief Constable of the Royal Ulster Constabulary*, 311n.59
- cy-près distribution
 - Australia, 321–3, 329, 346, 349–57, 364–5
 - behavioural modification goal, 340, 345–6
 - Canada, 321–3, 328, 346–9, 358, 362, 364
 - as class action remedy, 35–7, 320–4, 358–65
 - discriminatory charitable trusts, 174–5, 177, 200n.135
 - plaintiff remedial preferences, 332–3, 334–5, 359–60
- damages
 - class actions, 328–9
 - punitive damages, 338–40, 344–5
- Datafin (R v. Panel on Takeovers and Mergers, ex parte Datafin plc)*, 82–4, 88
- Davies v. Perpetual Trustee Company*, 192–3
- Debruche, Anne-Françoise, 222n.48
- deceit, 296n.23
- defamation, 292n.12, 319n.87
- Denning, Lord, 260–1, 296–7
- derivatives mis-selling, 250–60
- Derry v. Peek*, 258–9
- deterrence
 - as behaviour modification goal, 340–2, 348
 - as class action remedy, 325–6, 352–3
- cy-près distribution as class action remedy, 358–65, *see also* behavioural modification as goal of civil litigation
- dignity (human), 216–17
- Diplock, Lord, 85, 297, 307n.51
- discontinuance provisions in class actions, 356–7
- discriminatory charitable trusts
 - authorities responses to, 174–81
 - public benefit test, 27, 171–4, 204–6
 - public element of public benefit test, 182–204
- disgorgement, 326, 337–8, 344–5
- dishonest assistance, 243–6
- doctrinal law
 - decline of, 108–13
 - from nineteenth century, 101–8
- Donaldson MR, 82–4
- Draft Common Frame of Reference (DCFR), 110–11, 113–16
- Du Toit, François, 172–3n.9
- duty of care, 248–50, 296
- Dworkin, Ronald, 78
- economic losses, 296
- economic purposes of law, 111
- efficiency achieved by global convergence, 278–80
- Elias LJ, 80
- England, 158n.29, 180–1, 198n.129
- England, Izhak, 15–16
- equality, 217
- Equality Act (2010), UK, 180–1
- equity
 - conscience (integrity), 262–3
 - in modern law, 99–100, 103
- European Convention on Human Rights (ECHR)
 - globalisation of law, 10–11
 - private life, right to respect for, 61–2
 - vindication of rights, 304–5, 314–15
- European Court of Human Rights (ECtHR), 10–11, 55–6
- European private law, 110–11, 113–16
- European Union (EU) financial regulation, 234–5, 247, 262–3
- expropriation, 215n.28, 222
- family life, 60–3
- Federal Court Act (1976), Australia, 328, 349, 357
- fees in class actions, 330–2, 340–1
- fiduciary duty, breaches of, 337–8
- finance law
 - banks, public nature of, 238–41
 - caveat emptor*, 252–6
 - dishonest assistance, 243–6

Cambridge University Press

978-1-107-03911-7 - Private Law: Key Encounters with Public Law

Edited by Kit Barker and Darryn Jensen

Index

[More information](#)

370

INDEX

- finance law (*cont.*)
 - duty of care, 248–50
 - and financial regulation, 236–8, 242–8, 250–60
 - financial regulation, lessons from, 260–3
 - integrity, 262–3
 - mis-selling cases, 250–60
 - precedent, 257–60
 - private/public synthesis, 29–30, 231–6, 263–4
 - unconscionable receipt, 243–6
 - undue influence, 260–2
- Financial Conduct Authority, 233n.9
- financial regulation
 - in case law, 250–60
 - dishonest assistance, 243–6
 - duty of care, 248–50
 - and finance law, 236–8, 242–8, 250–60
 - ignorance of, 246–8
 - integrity, 262–3
 - law, merger with, 242–6
 - mis-selling cases, 250–60
 - private law, influence of, 260–3
 - private/public synthesis, 29–30, 231–6, 263–4
 - unconscionable receipt, 243–6
 - undue influence, 260–2
- Financial Services and Markets Act (FSMA, 2000), UK, 233, 237
- Financial Services Authority (FSA)
 - banks, settlements with, 248
 - EU law, influence of, 233–5
 - integrity principle, 262
 - Markets Tribunal, 249
 - objectives, 236–8
- financialisation, 240–1
- financing litigation, 330–2
- Finkelstein J, 353–4
- Finnis, John, 295
- Flaherty, Michelle, 9, 27–8
- follow-on (class action) suits, 341
- forms of action, 97–100, 103
- Fowler v. Lanning*, 297n.26, 307n.51
- freedom, *see* autonomy (positive freedom)
- freedom of speech, 292n.12
- free-rider problem, 58
- Fried, Charles, 90–1
- Friedman, Gary B., 340
- Gagne v. Silcorp Ltd.*, 343n.83
- gender inequality, 60–3
- Gevurtz, Franklin, 275–6, 281–2
- gifts, 166n.64
- Gilles, Myriam E., 340
- Gilmour v. Coats*, 161, 194, 201n.139
- globalisation, 10–11, 271–7
- Gloster J, 255, 258
- Godbout, Jacques T., 166n.64
- Good, Mathew, 347–8
- Gordley, James, 12
- Gorham v. British Telecommunications Plc*, 249
- Grammond, Sébastien, 220n.42
- Greece, 240
- grouped proceedings, 320n.1, *see also* class actions
- Hamblen J, 257–9
- Hammond, Grant, 332
- Hansmann, Henry, 272–3, 276–7, 278
- hard appellate court cases, 76–88
- Harding, Matthew, 17, 26–7, 173n.12
- Harman LJ, 162, 198
- Harrington, James, 48n.5
- Hart, H.L.A., 118n.5, 123, 124, 128, 138, 151
- Hedley, Steve, 7, 16–17, 22–4
- Hegel, Georg W.F., 89
- Heinl v. Jyske Bank (Gibraltar) Ltd.*, 245
- Herschell, Lord, 258
- Hobhouse, Lord, 81–2
- Hodges, Christopher, 336
- Hoffman, Lord, 290n.5, 296n.22
- Hohfeld, Wesley Newcomb, 124–7
- Holmes, Oliver Wendell, Jr., 94, 122
- Hope, Lord, 81–2
- Horwitz, Morton, 24, 134, 135n.41
- Hospitality Group Pty Ltd. v. Australian Rugby Union Ltd.*, 353n.128
- Hudson, Alastair, 7, 8, 29–30
- human dignity, 216–17
- human rights
 - bequeathal, 209, 223–30
 - discriminatory charitable trusts, 196–7

Cambridge University Press

978-1-107-03911-7 - Private Law: Key Encounters with Public Law

Edited by Kit Barker and Darryn Jensen

Index

[More information](#)

INDEX

371

- European human rights law, 10–11, 55–6, 61–2, 304–5, 314–15
human rights influence on private law, 211, 213–15
private law influence on human rights, 27–8, 207–9, 215–18, 229–30
property rights, 208, 218–22, 229
tensions between, 8–10, 210–13
Human Rights Act (1998), UK
private law, pressure on, 9–10
state/non-state distinction, 79–82, 87–8
vindication of rights, 304–5
- Iacobucci J, 220–1
IFE Fund SA v. Goldman Sachs International, 255–6
Independent Schools Council case, 198–9n.132
information, and institutions, 127–31
injunctions, 329–30, 342–4
Inland Revenue Commissioners v. Baddeley, 186–7, 189–92
institutions
core competencies, 138–41
and information, 127–31
public/private distinction, 131–8
instrumentalism, 11–17, 93–5
insurance, 8, 291, 342
integrity, 262–3
intellectual property rights, 337–8
intentional torts
judicial oversight of public authorities, 317–19
mental state, intention as, 295–7
primary rights, 301–7
private role, 294–307, 311–12
public role, 33–5, 288–90, 307–17
as strict liability torts, 297–301
use of, 293–4
international law, 142–3, 284
Ireland, 161n.39, 240
Italy, 240
- Jansen, Nils, 20
Jennings, Jared N., 359n.152
Jones, Craig, 340, 341–2
- JP Morgan Chase Bank v. Springwell Navigation Corporation*, 254–5, 258
- Kalajdzic, Jasminka, 349
Kamenka, E., 136n.45
Kamloops (City) v. Nielsen, 210
Kant, Immanuel, 15–16, 36
Kay v. South Eastern Sydney Area Health Service, 179, 200n.136, 205
Kedia, Simi, 359n.152
Kennedy, Duncan, 90–1, 136–7
Knox J, 244
Kraakman, Reinier, 272–3, 276–7, 278
Krug, Anita, 7, 11, 30–2
- laissez-faire age, 102
Lamfalussy Report, 262–3
Langbein, John, 12
Larosière Report, 263
Law Commission (England and Wales), 232n.3
law schools, 102
lawyer styles, 330–2
legal globalisation, 10–11, 271–7
legal realism, 212–13
legal systems, *see* public/private theory of legal systems
legislation, influence of, 5–7
Leonard Fund (*Canada Trust Co.*), 176–9
Letang v. Cooper, 296–7
LexisNexis, 342
litigation finance, 330–2, 360–1
Lloyd LJ, 83
Lloyds Bank Ltd. v. Bundy, 260–1
Longmore J, 257
Loosemore v. Financial Concepts, 248–9
Lucy, William, 20, 37
- MacCormick, Neil, 77–8
Macmillan Inc. v. Bishopgate Investment Trust Plc (No. 3), 246
Mance J, 243
Manolakaki v. Constantinides, 245–6
Mareva injunctions, 343
marketisation, 18
Markets in Financial Instruments Directive (MiFID, 2004), 234–5

Cambridge University Press

978-1-107-03911-7 - Private Law: Key Encounters with Public Law

Edited by Kit Barker and Darryn Jensen

Index

[More information](#)

372

INDEX

- Marshall v. Osmond*, 310n.55
 Mauss, Marcel, 166n.64
McGhee v. National Coal Board, 290n.8
 medical negligence, 106–8
 medieval law, 97–100, 102
 Michaels, Ralf, 20
 Millett J, 246
 misfeasance in public office, 313
 mis-selling financial products, 250–60
 Money Laundering Regulations (2007), UK, 246
 Morabito, Vince, 354, 357
 Moran, Mayo, 214
Morgan Stanley UK Group v. Puglisi Cosentino, 257
 Morris, Debra, 173n.11, 178n.47
 Mulheron, Rachael, 352, 354
 Mustill, Lord, 318

 Napoleon Bonaparte, 100
National Anti-Vivisection Society v. Inland Revenue Commissioners, 161, 163, 174, 195, 196
 negative freedom, 151–2
 negligence
 distinguished from intentional torts, 294–307
 growth of, 293–4
 tort law, 106–8
 waiver of tort, 338
 Neuberger, Lord, 80, 289, 312
 nineteenth-century law, 101–4
 Nolan, Donal, 302
 normativity, 336
 Northern Rock, 238
novus actus interveniens, 296

 Ontario Human Rights Code, 196, 225n.55
 Ontario Law Reform Commission (OLRC), 183, 184, 346–7
O'Reilly v. Mackman, 84–6

P Dawson Nominees Pty Ltd. v. Multiplex Ltd., 353–4
 Panel on Takeovers and Mergers, 56, 82–4
 Parachin, Adam, 17, 27

parens patriae, 119, 137–8
 parenting, 139n.50
 Parfit, Derek, 159
 Pashukanis, E.B., 135n.40
Peekay Intermark Ltd. v. Australia and New Zealand Banking Group Ltd., 254
Pemsel (Income Tax Special Purpose Commissioners v. Pemsel) ‘heads’ of charity, 182
 policing, 62–3
Polly Peck International Plc v. Nadir (Asil) (No. 2), 246
 pornography, 162
 Portugal, 240
 positive freedom, 151–3, *see also* autonomy (positive freedom)
 poverty, and charity law, 167–8
 precedent, 257–60
 price fixing, 336–7n.65
 Priel, Dan, 17, 33–5
 primary rules, 124–7
 private finance for public projects, 240–1
 private law
 codification, 6–7, 100
 coordination with public law, 39–41
 corporate law as, 267–71, 283
 courts as public authorities, 16–17, 89–90
 decline of, 108–13
 definition, 3–4
 doctrinal law, 101–8
 European private law, 110–11, 113–16
 human rights, influence of private law, 27–8, 207–9, 215–18, 229–30
 human rights, influence on private law, 211, 213–15
 ideologies applied to public law, 38–9
 instrumentalism, 93–5
 in medieval law, 97–100, 102
 in modern law, 104–8
 in nineteenth to twentieth centuries, 101–4
 objectives of this collection, 3–5

Cambridge University Press

978-1-107-03911-7 - Private Law: Key Encounters with Public Law

Edited by Kit Barker and Darryn Jensen

Index

[More information](#)

INDEX

373

- public nature of, 16–17, 22–4, 89–90, 93, 108–13
- public pressures on, 5–19
- purposes, 109–11
- Weinrib's idea of, 12–14, 22–4, 34, 36–7, 91–3, 95–7, 109, 111–12, *see also* charity law; class actions; corporate law; finance law; property rights; public/private theory of legal systems; tort law
- private/public distinction
 - charitable trusts, 49–50
 - continuance of, 37–8
 - corporate law, 11, 30–2, 265–7, 277–82
 - corporate law, alternative conception, 282–7
 - definitional debates, 19–25
 - general versions, 66–71
 - in history, 95–104
 - indeterminacy of, 75–88
 - legal-doctrinal version, 64–6, 71, 84–6
 - permeability thesis, 71–5, 86
 - public/private goods version, 57–60, 71
 - public/private interest version, 47–53, 67–8
 - public/private life version, 60–3, 70–1
 - public/private theory of legal systems, 24–5, 131–7, 143
 - specific versions, 66–71
 - state/non-state distinction version, 53–7, 68–70, 76–88
 - taxonomy, 267–9
 - versions, 20, 45–7
- privatisation of public services, 54–7
- procedural exclusivity rule, 84–6
- procedure, 131, 137–8
- Proceeds of Crime Act (2002), UK, 246
- profit-making, and charity law, 164–5, 167–8, 169
- property rights
 - human right to property, 208
 - private law influence on human rights, 218–22, 229
- Prudential Regulation Authority, 233n.9
- public benefit test for charities
 - authorities' responses to discriminatory charitable trusts, 174–81
 - benefit component, 158–63, 194–204
 - and discrimination, 27, 171–4, 204–6
 - public component, 163–9, 182–94
- public goods, 57–60, 156–8
- public law, 3–5, 38–9, 285–6
- public/private distinction
 - charitable trusts, 49–50
 - continuance of, 37–8
 - corporate law, 11, 30–2, 265–7, 277–82
 - corporate law, alternative conception, 282–7
 - definitional debates, 19–25
 - general versions, 66–71
 - in history, 95–104
 - indeterminacy of, 75–88
 - legal-doctrinal version, 64–6, 71, 84–6
 - permeability thesis, 71–5, 86
 - public/private goods version, 57–60, 71
 - public/private interest version, 47–53, 67–8
 - public/private life version, 60–3, 70–1
 - public/private theory of legal systems, 24–5, 131–7, 143
 - specific versions, 66–71
 - state/non-state distinction version, 53–7, 68–70, 76–88
 - taxonomy, 267–9
 - versions, 20, 45–7
- public/private theory of legal systems
 - adjudication decisions, 137–8
 - applications, 141–3
 - authority, division of, 118–20
 - coercive resources, legal systems as, 120–4
 - constitutional law, 119, 131, 137–8, 141–2
 - contract law, 119, 137–8, 142–3
 - core competencies, 138–41

Cambridge University Press

978-1-107-03911-7 - Private Law: Key Encounters with Public Law

Edited by Kit Barker and Darryn Jensen

Index

[More information](#)

374

INDEX

- public/private theory of legal systems (*cont.*)
 - duties, 124–7
 - information, 127–31
 - institutions, 127–31
 - law, practice of, 117–20
 - primary rules, 124–7
 - private entities in, 121n.7
 - procedure, 131
 - public/private distinction, 24–5, 131–7, 143
 - secondary rules, 124–7, 131
- public projects with private finance, 240–1
- public service outsourcing, 54–7
- publics, nature of, 120–2
- punishment, 326
- punitive damages, 338–40, 344–5
- Quebec
 - Charter of Human Rights and Freedoms, 218–22, 225n.55, 226–7, 229
 - Civil Code of Quebec, 212n.16, 214, 225
 - human right to property, 218–22, 229
 - testamentary clauses, 225–7, 228–9, 230
- R v. East Berkshire Health Authority, ex parte Walsh*, 84n.92
- R v. Governor of Brockhill Prison, ex parte Evans (No 2)*, 299n.34, 300–1n.36
- R (Weaver) v. London and Quadrant Housing Trust*, 65, 80
- Rabone v. Pennine Care NHS Trust*, 9–10
- Rajgopal, Shivaram, 359n.152
- Ramsay, Iain, 336
- Rawls, John, 165n.61
- Raz, Joseph, 152, 156, 159–60
- Re Dominion Students Trust*, 175
- Re Drummond Wren*, 197n.127
- Re Estate of Philip Brown*, 228
- Re Goodwin*, 227n.67
- Re Hummeltenberg*, 161–2, 198
- Re Lysaght*, 174–5
- Re Muirhead Estate*, 224n.53
- Re Petit*, 226
- Re Pinion (deceased)*, 162, 198
- Re Ramsden Estate*, 178–9, 201
- reasonableness, 299n.32
- regulation of corporations, 265–6, *see also* financial regulation
- regulatory prosecutions, 341–2
- Reid, Lord, 88n.105
- Reils, Tamara, 333–4
- religious groups
 - Aston Cantlow v. Wallbank*, 81–2
 - discriminatory charitable trusts, 188, 189–92, 200–1
 - private/public distinction, 49–50
 - promotive function of charity law, 155–6
 - public benefit test, 161
- remedial goals of civil litigation
 - behaviour modification approaches, 335–46
 - cy-près distribution as class action remedy, 320–4, 358–65
 - cy-près distribution in Australia, 321–3, 329, 346, 349–57, 364–5
 - cy-près distribution in Canada, 321–3, 328, 346–9, 358, 362, 364
 - functions of, 324–8
 - monetary relief, 328–32
 - plaintiff preferences, 332–5, 359–60
- restitution, 326
- Ripstein, Arthur, 36
- road traffic accidents, 104–5, 106–8
- Robins JA, 177
- Rodger, Lord, 81–2, 304n.44, 312
- Roe, Mark, 273, 276–7
- Roman republic, 47–8
- Russell J, 161–2
- Sales J, 203
- Sanderson, Margaret, 336–7n.65
- Savoie J, 226
- Schmidt, Reinhard, 274, 276–7
- Schulte-Nölke, Hans, 113–14
- Schwartz, Gary, 336
- Scott, Lord, 82, 246, 312
- Searle, John, 298
- secondary rules, 124–7, 131

Cambridge University Press

978-1-107-03911-7 - Private Law: Key Encounters with Public Law

Edited by Kit Barker and Darryn Jensen

Index

[More information](#)

INDEX

375

- Securities and Exchange Commission (SEC), 269, 359n.152
- Securities and Investments Board (SIB), 232n.3
- securities law, 286
- Sedley LJ, 85
- self-help, 326
- Serhan Estate v. Johnson & Johnson*, 338n.67
- Seymour v. Christine Ockwell*, 248
- shareholders, 272–3
- Shelley v. Kraemer*, 141–2
- Simonds, Lord, 148, 174, 186–7, 189–92, 194
- Simpson, Brian, 74
- Skinner, Quentin, 48n.5, 51n.18
- Smith J, 245–6, 259–60
- social policy, 212–13
- societal attitudes, 303
- Somervell, Lord, 187n.89
- Sphere Drake Insurance Ltd. v. Euro International Underwriting Ltd.*, 245
- Spindler, Gerald, 274, 276–7
- statistics, 291–2
- Steel J, 252–3
- Stevens, Robert, 306n.47, 307n.50
- Sunstein, Cass, 336
- Supreme Court Act (1986, Vic), Australia, 328, 329, 349, 351
- Supreme Court of Canada, 347, 348
- Sutherland v. Boots Pharmaceuticals PLC*, 361
- systems theory, 236n.25
- Tarnopolsky J, 178
- taxpayers and the cost of class actions, 341–2
- Tay, A.E-S., 136n.45
- testamentary clauses, 28, 223–30, 225n.55
- Thayler, Richard, 336
- Titan Steel Wheels Ltd. v. Royal Bank of Scotland Plc*, 252–4
- tort law
- developments since nineteenth century, 106–8
 - expansion into public realm, 290–3
 - legislation, influence of, 6
 - private/public interaction, 32–7
 - private roles of intentional torts, 294–307, 311–12
 - public/private theory of legal systems, 119, 137–8, 141, 142–3
 - public role, 17, 33–5, 288–90, 307–17
 - trespass, 99
 - waiver of tort, 338, *see also* class actions; intentional torts
- treaties, 142–3
- Trebilcock, Michael, 336–7n.65
- trespass, 99, *see also* intentional torts
- Turner, Christian, 24–5, 26
- twentieth-century law, 101–4
- Twigg-Flesner, Christian, 113
- unconscionable receipt, 243–6
- undue influence, 260–2
- United Kingdom (UK)
- bank bail-outs, 238
 - ECtHR jurisprudence, 10–11
 - finance law, 233–6
 - financial services, 239–40
 - human rights and private law, 9–10
- United States (US)
- bank bail-outs, 238–9
 - class actions, 322, 329–30, 334n.54
 - corporate law, 265
 - corporate law as public law, 269–70
 - cy-près distribution schemes, 361n.154
 - discriminatory charitable trusts, 174–6
 - financial services, 240
 - punitive damages, 339
 - university law schools, 102
- University of Victoria v. British Columbia (A.G.)*, 178–9, 201
- value pluralism, 160, 162–3
- Victorian Law Reform Commission (VLRC), 355–7
- viduity testamentary clauses, 223–30
- vindication of rights
- private law interpretation of intentional torts, 301–7, 311–12
 - public conception of, 289–90
 - public law interpretation of intentional torts, 33–5, 307–17
 - remedial role, 327–8
- vivisection, 161, 163

- waiver of tort, 338
- Wales, 158n.29
- Walters, Mark, 217n.33
- Waters, Donovan, 162n.46
- Weaver (R (Weaver) v. London and Quadrant Housing Trust)*, 65, 80
- Weinrib, Ernest, 12–14, 22–4, 34, 36–7, 91–3, 95–7, 109, 111–12, 171, 214
- Weinrib, Lorraine, 171
- Weintraub, Jeff, 133
- welfare state, 5, 292
- widowhood, 223–30
- Williams, Alexander, 20, 37
- Wilson v. Pringle*, 298
- Witzleb, Normann, 333
- women
 - family/household as private realm, 60–3
 - viduity testamentary clauses, 223–30
- Wolf, Lord, 85–6
- Wright, Lord, 163, 195, 196
- YL v. Birmingham City Council*, 80
- Zamboni, Mauro, 5, 10, 18
- Zimmermann, Reinhard, 113