
CONTENTS

<i>Foreword</i>	vii
<i>Acknowledgements</i>	xvii
<i>Author Biography</i>	xix

Part I: Collective Redress, Mass Harm, Multi-party Actions and Environmental Mass Harm

1. Introduction.....	3
1. Background	3
2. Aims, Original Contribution, Anticipatory Findings.....	4
3. Approach	6
4. Structure	9
A. Part I.....	9
B. Part II	10
2. Collective Redress and Mass Harm.....	11
1. Overview.....	11
2. Terminology	12
A. Mass Harm.....	12
B. Collective Redress.....	12
C. Multi-party Actions.....	13
D. Mass Torts.....	14
3. Typology and Sectoral Coverage of MPA Collective Redress.....	16
A. Class Actions (also Known as Collective or Representative Actions)	17
B. Joinder or Aggregate (also Known as Group) Litigation Procedures	20
C. Examples of MPA Sectors	21
i. Consumer Law Collective Redress	21
ii. Competition Law Collective Redress	23
iii. Collective Redress for Environmental Harm.....	23
iv. EU Approach to Collective Redress.....	23
4. The History and Background of Mass Torts.....	25
5. Legal Responses to Mass Harm: Private Law (Tort Law) versus Public Law and Regulation	28
6. Context in which Collective Redress Arises	32

7.	Outline of Common Law MPA Procedures	33
A.	United States.....	33
i.	Consolidation.....	33
ii.	Class Actions	34
B.	Canada	37
C.	Australia.....	40
i.	Joinder, Test Cases and Consolidation.....	42
ii.	Representative Proceedings	42
D.	England and Wales	45
i.	Consolidation, Joinder and Test Cases.....	46
ii.	Representative Actions.....	46
iii.	Group Litigation Orders.....	47
E.	Ireland	49
i.	Representative Actions.....	51
ii.	Joinder	51
iii.	Consolidation.....	51
iv.	Test Cases.....	52
F.	European Union	52
8.	Summary	56
3.	Objectives of MPAs.....	58
1.	Overview.....	58
2.	Expert Studies.....	59
A.	Access to Justice Study by Lord Woolf MR	59
B.	Irish Law Reform Commission Report on Multi-party Litigation 2005	60
C.	Civil Justice Council Report.....	63
D.	Mulheron Global Comparative Study.....	64
E.	European Commission Analysis.....	64
3.	MPA Objectives—Analytical Framework	67
A.	Access to Justice.....	69
B.	Judicial and Procedural Economy	76
C.	Fairness	80
D.	Predictability.....	85
E.	Deterrence.....	86
F.	Compensation	88
4.	Management Role of MPAs	91
5.	Summary	97
4.	Environmental Mass Harm and Collective Redress	98
1.	Overview.....	98
2.	Regulatory Role—Environmental Law Enforcement Through Tort Law	100
A.	Tensions between Tort Law and Regulation.....	101
B.	EU Perspective of Enforcement—a Different Approach.....	102
C.	England and Wales—Perspective on Enforcement.....	103
D.	Regulation and Adjudication.....	106

3.	Distinctive Features of Environmental Mass Harm and Responses	107
A.	Toxic Torts	107
B.	Causation and Evidential Complexity.....	110
C.	Legal Costs	112
D.	Latency	113
E.	Environmental Justice Issues	116
F.	Other Issues that May Arise in Mass Environmental Harm Litigation.....	119
	i. Jurisdiction	119
	ii. Corporate Veil	120
4.	Novel Remedies for Environmental Mass Harm	121
A.	Interim Measures—such as Medical Monitoring (Emergence in the US)	121
B.	Acute versus Chronic Environmental Harm and Novel Remedies.....	123
C.	Equitable Relief and Problems with Legal Restitution	123
5.	Solutions that MPAs May Offer for Environmental Mass Harm.....	125

**Part II: Comparative Law Experience of Selected
Common Law Jurisdictions and Europe**

5.	US Collective Redress	131
1.	US Litigation Landscape	131
A.	US Federal and State Court System.....	131
B.	Important Features of US Litigation	132
2.	US MPA Procedures	133
A.	Joinder.....	133
B.	Consolidation	134
C.	Multidistrict Litigation (MDL) Transfer of Distinct but Related Claims into a Single Action	134
D.	US Bankruptcy Proceedings for Corporate Reorganisation (Chapter 11)	135
E.	Attorney ‘Inventories’ of Clients Controlled by a Single Lawyer	135
F.	Representative Litigation by Associations	135
G.	Representative Litigation by Public Officials	136
H.	Class Actions.....	136
3.	The US Federal Class Action Regime	136
4.	Rule 23 of the Federal Rules of Civil Procedure (with 2003 Amendments)	139
A.	Rule 23(a) Prerequisites to a Class Action.....	139
B.	Rule 23(b) Class Actions Maintainable	140
5.	Evaluation of US Class Actions against MPA Objectives	142
A.	Access to Justice	143
B.	Judicial and Procedural Economy	144
C.	Fairness	147
D.	Predictability.....	150
E.	Deterrence.....	151
F.	Compensation	152

6.	Concluding Observations on US Mass Harm Litigation	152
7.	Future Developments in the US	154
8.	US Class Actions and Environmental Mass Harm	156
6.	Canadian MPA Experience.....	159
1.	Canadian Litigation Landscape.....	159
A.	Overview.....	159
B.	Evolution of MPA Landscape	160
2.	MPA Litigation	161
3.	Evaluation of Canadian Class Action Experience Against MPA Objectives	168
A.	Access to Justice	168
B.	Judicial and Procedural Economy	169
C.	Fairness	170
D.	Predictability.....	171
E.	Deterrence.....	171
F.	Compensation	171
4.	Environmental Mass Harm Litigation	172
5.	Summary	173
7.	Australian MPA Experience.....	174
1.	Australian Litigation Landscape.....	174
2.	Evolution of MPA Landscape	174
3.	MPA Overview.....	177
A.	The Quasi-Class Action Regime in the State of South Australia	177
B.	Traditional Representative Actions.....	178
C.	Representative Proceedings.....	178
D.	Joinder, Test Cases and Consolidation	179
4.	The Representative Proceedings Regime.....	180
A.	Background.....	180
B.	The Regime	182
5.	Litigation Funding	186
6.	Evaluation of Australian Representative Proceedings against MPA Objectives	187
A.	Access to Justice	187
B.	Judicial and Procedural Economy	187
C.	Fairness	188
D.	Predictability.....	189
E.	Deterrence.....	189
F.	Compensation	189
7.	Environmental Mass Harm in Australia and Summary.....	190
8.	Collective Redress in England and Wales	191
1.	Litigation Landscape.....	191
2.	Existing MPA Procedures.....	192
A.	Public Representative Procedures.....	192

B.	Representative Actions, Consolidation, Joinder and Group Litigation Orders (GLOs).....	195
	i. Representative Actions.....	196
	ii. Group Litigation Orders (GLOs)	199
3.	Evolution of MPA Landscape.....	202
4.	Funding Regime and Recent Changes	207
5.	GLOs and MPA Objectives.....	209
	A. Access to Justice	209
	B. Judicial and Procedural Economy	210
	C. Fairness	211
	D. Predictability.....	212
	E. Deterrence	213
	F. Compensation	213
6.	Combined Case Study of Environmental Mass Harm.....	213
	A. Group Litigation Using a GLO in <i>The Corby Group Litigation Case</i>	216
	i. Facts	216
	ii. Outcome.....	217
	iii. Commentary	218
	B. Case Management— <i>The Buncefield Oil Disaster</i>	219
	i. Facts	219
	ii. Outcome.....	220
	iii. Commentary	221
7.	GLOs Compared with Case Management.....	223
8.	Environmental Mass Harm Litigation in England and Wales Summary	225
	A. Access to Justice.....	226
	B. Judicial and Procedural Economy	227
	C. Fairness	228
	D. Predictability.....	229
	E. Deterrence	229
	F. Compensation	229
9.	EU Collective Redress	232
1.	Litigation Landscape	232
2.	Evolution of European Collective Redress Policy.....	233
	A. Consumer Law Collective Redress.....	233
	B. Competition Law Collective Redress.....	237
3.	EU Experience of Collective Redress and ADR in Member States	239
4.	EU Commission’s Collective Redress Policy Proposals 2013	245
	A. The Communication.....	247
	B. The Recommendation.....	248
	C. Proposed Directive on Competition Damages	250
5.	Safeguards.....	251
6.	Environment.....	252
7.	Conclusions on European Collective Redress Outlook.....	253

10.	Collective Redress for Mass Harm in Ireland	255
1.	Litigation Landscape.....	255
2.	The Irish Approach: No MPAs.....	256
A.	Overview of Current Irish Mechanisms for Dealing with Mass Harm	257
i.	Public Actions	257
ii.	Organisation Actions	257
iii.	Litigation Avoidance	258
iv.	EU Initiatives.....	259
v.	Private Actions	259
vi.	Other Discrete Areas	260
B.	Cases Exemplifying the Problems of Mass Harm	
	Litigation in Ireland	261
i.	Social Welfare Equality Cases	261
ii.	Army Deafness Claims.....	261
iii.	Pyrite Construction Dispute	262
3.	Particular Difficulties with Multi-party Litigation in Ireland	262
A.	Legal Aid	263
B.	Insurance	264
C.	Costs Follow the Event	264
D.	Conditional Fee Arrangements (CFAs).....	264
E.	Advertising and the Irish Legal Profession.....	264
4.	Irish Law Reform Commission Report on Multi-party Litigation 2005—A Closer Look	265
5.	Evaluation of Irish Mass Harm Mechanisms and MPA Objectives	266
A.	Access to Justice	267
B.	Judicial and Procedural Economy	269
C.	Fairness	269
D.	Predictability, Deterrence and Compensation.....	270
6.	Environmental Enforcement in Ireland	270
7.	What May Lie Ahead	270
A.	Developments in England and Wales.....	270
B.	Aarhus and Human Rights	271
C.	EU Initiatives	272
8.	Conclusions.....	272
11.	Conclusion	274
	Appendix: Federal Rules of Civil Procedure 2016 Edition.....	283
	<i>Bibliography</i>	287
	<i>Index</i>	299