



CHAMBERS

Legal Practice Guides

Litigation

Edited by Evan R Chesler
and Timothy G Cameron

Cravath, Swaine & Moore LLP

2014

CHAMBERS & PARTNERS

LEGAL PUBLISHERS



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Chambers Legal Practice Guides

For more than 20 years, Chambers Legal Guides have ranked lawyers and law firms across the world. Chambers now offer clients a new series of Legal Practice Guides, which contain practical guidance on doing legal business in key jurisdictions. We use our knowledge of the world's best lawyers to select leading law firms in each jurisdiction to write the 'Law & Practice' sections. In addition, the 'Trends & Developments' sections analyse trends and developments in local legal markets. The 'Doing Business In' sections, based on the views of clients with in-depth international experience, contain hard-won knowledge about typical local problems and how to overcome them – information usually missing from official guides.

Disclaimer: The information in this guide is provided for general reference only, not as specific legal advice. Views expressed by the authors are not necessarily the views of the law firms in which they practise. For specific legal advice, a lawyer should be consulted.

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Our Editorial Team

Our Editorial Team

Here you can see our editors, deputy editors and researchers. They are all currently (May 2014) working full-time at our head office in central London. More biographical information can be found on the 'About Us' page of our website.

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Editor, Women in Law. Studied Law (LLB) at Queen Mary College, University of London, and completed the Legal Practice Course at BPP Law School. Trained at a City firm and worked as a Project Finance solicitor. Also has a background in events and international marketing.



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Our Editorial Team

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The Researchers are responsible for interviewing clients and lawyers, and for assembling the data needed for the rankings and commentary.

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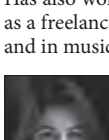
Graduated with a BA in English Literature from Cambridge University in 2007, and has recently completed a GDL with BPP College in Bristol. Has also worked in the Civil Service, as a freelance copy-editor and writer, and in music production.

**Charles Scherer**

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**Alastair Stewart**

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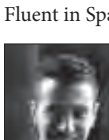
Graduated from King's College London with a BA in Hispanic Studies. Spent a year abroad teaching English in Madrid. Fluent in Spanish.

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Graduated with a BA (Hons) in Ancient and Modern History from Corpus Christi College, Oxford, in 2010. Has previously worked in private practice in the field of intellectual property, specialising in trade mark matters throughout the world.

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Graduated with a BSc (Hons) in International Relations from the University of Southampton, and has since gained experience across a broad range of media and communications roles.

**Alistair Faiers**

Graduated in 2012 from the University of Warwick with a BA in English and Latin Literature. Writes and directs plays for his theatre company in his spare time.

**Daniel O'Donoghue**

Graduated in 2012 from Trinity Hall, Cambridge with a BA in Law. Completed the Bar Professional Training Course at Kaplan Law School and was called to the Bar by the Inner Temple in 2013.

The Researchers *continued*



Danielle Vidigal

Holds a bachelor's degree in Cinema. Has worked for the main broadcasting company in Brazil and as an interpreter for the NHS. Speaks Portuguese and Spanish, and is learning German.



David Greaves

Graduated in English and Creative Writing from the University of Warwick before obtaining an MLitt (Distinction) in Creative Writing from the University of Glasgow. Speaks Spanish.



Dennis Li

Graduated with an MA (Merit) in Publishing from University College London. Has considerable editing and project management experience in publishing. Native Mandarin speaker and also speaks German.



Diana Statham

Graduated with a BA (Hons) in Russian and French from Murray Edwards College, Cambridge, in 2013. Spent one year at the St. Petersburg State Conservatory. Studying the cello.



Dimitra Tennakoon

Graduated from Wadham College, University of Oxford, in 2013 with a BA in Modern Languages (Spanish & Portuguese). Has previously lived and worked in Brazil, Argentina and Spain.



Duncan Scott

Graduated from UCL in 2012 with a BA (Hons) degree in History, specifically focused on British, American and Caribbean

Colonial History. Also completed the Graduate Diploma in Law (Commendation) at the University of Law, Bloomsbury in 2013.



Edén Palmer-O'Connor

Graduated from The University of Leeds with a 2:1 in Chinese Studies. Has spent time working in China.



Elaine Allaby

Graduated with a BA in English Literature from Warwick University in 2011. Has lived, studied and worked in Nepal and India.



Eleanor Burt

Graduated with a BA (Hons) in History from University College London in 2011, specialising in London history. Went on to complete the GDL and LPC, finishing in 2013.



Elizabeth Court

Graduated with a BA (Hons) in English from the University of Cambridge and studied the GDL at BPP Law School (Distinction). Previously worked for MasterCard and interned at a pharmaceutical company in Geneva, Switzerland.



Ellen Davis-Walker

Graduated from the University of Cambridge in 2013 with a BA in Modern and Medieval Languages. Wrote and blogged on behalf of a North London arts charity, and now sits on the steering committee for a local film festival in her spare time. Speaks French and Italian.



Emilia Halton-Hernandez

Graduated in 2013 from the University of Warwick with a BA in History. Has also spent some time studying Philosophy and Literature at the Universidad Complutense in Madrid, and at UC Berkeley. Has previously interned at the British Council and a number of publishers.



Emily Rainbow

Graduated with a BA (Hons) in English and Spanish from The Queen's College, Oxford, in 2013. Spent a year teaching English in Costa Rica and Argentina.



Emma Roche

Graduated with an LLB (Law) from King's College London and an MSc in Nationalism/European and International Politics from the University of Edinburgh. Holds an NCTJ qualification in journalism from the University of Strathclyde and has worked as a print and broadcast journalist for six years in Belfast and London. Speaks French.



Felipe Goralski

Graduated with a BA (Hons) in Politics from UCL in 2006. Previously worked for a French medical assistance company in London. Studied the GDL and LPC at College of Law and obtained an LLB. Speaks Spanish and French.



Felix Turner

Graduated from UCL in 2012 with a BA in History. Speaks Spanish fluently.

Our Editorial Team

The Researchers *continued*



Georgia Stephens

Graduated in 2012 with a BA Hons in Politics and International Relations at the University of Sussex.

Worked at the university as a news editor for its weekly newspaper and previously worked as editor-in-chief of a high school magazine.



Georgina Street

Graduated from the University of Liverpool with a degree in International Politics and Policy. Has completed

research and communications-based internships with the British Red Cross and Giving Africa.



Hannah Hill

Graduated in 2013 from the University of Sheffield with a BA in German and Economics. Spent one year studying

at the Humboldt-Universität zu Berlin.



Harry Dalton

Graduated from the University of Nottingham in 2012 with a BA in Politics. Received his NCTJ training quali-

fication from the Press Association.



Houman Barekat

Holds an undergraduate degree in Law and a Master's in Modern History, both from University College London.



Ines Cortesao

Graduated from Nova University of Lisbon with a degree in English and Literature, and studied abroad at

the University of Southampton for one semester. Portuguese is her first language.



James Pulford

Graduated from the University of Manchester in 2012 with a BA in English Literature and an MA in

Creative Writing. Also writes fiction, drama and criticism.



Jessica Bird

Graduated from the University of York in 2013 with a BA (First) in English and Related Literature. Has taught

English in Kerala, India, is involved with a number of charity organisations and writes for several online publications in her spare time.



Jessica Gray

Graduated from UCL with a BA in English Literature in 2012 and an MA in Modern Literature in 2013.

Previous work experience includes internships with several publishing companies.



Jessica Jacobsen

Graduated in English Law and French Law from the University of Manchester in 2012. This included spend-

ing a year studying French Law and Language in Lyon, France. Previously worked in legal administration. Speaks French and Spanish.



Joanna Bell

Graduated from the University of Sheffield with a BA in Modern Languages (Spanish, Russian and French).

Has spent time studying abroad in St Petersburg and at the University of Salamanca.



Jonathan Karstadt

Graduated from the University of Sheffield with a BA in Modern Languages (Russian, German and Czech).

Has travelled extensively in Europe and completed a study abroad period in Petrozavodsk, Russia, and a work placement in Vienna, Austria.



Josie Hinton

Graduated in 2007 with a BA in English Literature from the University of Newcastle upon Tyne before undertak-

ing an NCTJ Postgraduate Diploma in Newspaper Journalism. Undertook the GDL in 2013 after five years spent working as a reporter for local and national news publications.



Julian Frazer

Graduated in 2013 from King's College London with an LLB in Law. Has previously lived in Hong

Kong, Mexico and Germany, and has worked in Malta and Shanghai for a global wealth management practice.



Karl Read

Graduated in 2012 from Durham University with an LLB.



Katharina Gunther

Graduated with a Law Degree from University of Hamburg in 2012 and a MSc in International Public Policy

from University College London in 2013.



Katy Newson

Graduated from King's College London with an LLB in Law in 2012. Went on to complete a Master's degree at Uni-

versity College London in Law specialising in Human Rights Law.

The Researchers *continued*



Kristen McGachey

Originally from Los Angeles, CA, moved to the UK in 2008 and graduated from the University of Nottingham in 2011 with a BA degree in English Studies with Philosophy. Completed her Master's degree in Philosophy & Literature at the University of Warwick in 2012.



Kristina Tailor

Graduated from the University of Nottingham in 2013 with an LLB in Law with European Law.



Lara-Jane Ideo

Graduated with a BA (Hons) in English Literature from Homerton College, Cambridge. Previously interned as a script consultant. Speaks Italian and French and has lived in both countries.



Laura Valdez

Graduated in English Language & Literature (European) from the University of Leeds in 2013. Spent a year studying abroad in Valencia and will study the GDL and LPC from September 2014 at the University of Law.



Laurence Kilpatrick

Graduated from the University of Leeds in 2012 with a degree in English Literature before moving on to Pembroke College at the University of Oxford where he obtained a Master's in Victorian Literature, focusing in particular on Dickens and urban space. He is also the sub-editor of a football publication which he co-founded with a friend.



Leslie Jaji

Graduated in 2013 from King's College London, with an LLB degree in Law. Has previously worked in the public sector and has gained experience from Internships with law firms and charities.



Lucy Pether

Studied undergraduate law at London School of Economics and previously worked for a legal news website.



Manjinder Toor

Graduated with a BA in English from King's College London, University of London. Previously worked in Corporate IT, Media and Public sectors.



Mario Adamou

Graduated in July 2013 with a degree in Law (LLB) from King's College London.



Matthew Grant

Graduated with a BA in Spanish and French from Newcastle University and then went on to study an MA in Professional Translation, also at Newcastle. Has also spent three years teaching English in Mexico.



Matthew Juggins

Has a BA in History & Ancient History from the University of Exeter, obtained in 2012. Has lived, studied and worked in Hong Kong, China and Singapore, and in his spare time is a writer and an Artistic Director of an amateur theatre company he co-founded.



Matthew Lewis

Graduated from King's College London in 2010 with a BA in Hispanic Studies with English and from University College London in 2012 with an MA in English Literature. He also works as a book and film critic in his free time.



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Graduated from the University of Cambridge with a BA (Hons) in Law.



Quinta Chapman

Graduated from Newcastle University in 2012 with first class honours in Government and European Union Politics which included one year studying Politics at Mannheim Universität, Germany. Went on to complete the GDL at the University of Law, London.



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Graduated from Nottingham University with a BA (Hons) in History in 2011. Recently completed the GDL at BPP Law School, London.



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Graduated from the University of Exeter with a BA in English in 2013. Has previously edited and produced a student creative arts magazine and interned with several literary agencies.



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Graduated from University College London with a BA in French and Italian. Has previously worked as a music journalist and in the fashion industry.

Our Editorial Team

The Researchers *continued*



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Graduated in Modern Chinese Studies from Leeds University, later completing the CPE at Westminster University. Previously worked in a domain name management company, helping clients to manage their intellectual property on the internet. Speaks Mandarin Chinese.



Sara Heltai

Graduated with a BA (Hons) from UCL in European Social and Political Studies with a minor in Italian Language and Culture. Holds a double MA degree in Euroculture from Universidad de Deusto and Uniwersytet Jagiellonski. Previously worked as a campaigner for environmental security and human rights in global supply chain management. Speaks Hungarian, English, French and Italian.



Sehar Rasul

Graduated from Queen Mary, University of London, with a BA in Politics. Previously worked as a project finance journalist and has also edited student magazines.



Shaun Tey

Graduated with an LLB (Law) from Queen Mary, University of London and subsequently completed the Bar Vocational Course at BPP Law School. Previously worked at the BBC and also briefly worked in Singapore. Enjoys producing reports for community radio in his spare time.



Shereen Zaki

Graduated from King's College London with an LLB (Hons) in Law in 2011. Has experience in Competition Law and Property Law.



Soffi James

Graduated from the University of Exeter with a First in English Literature in 2012, before completing a Masters in English Studies with a focus on 21st Century Literature. Previous work experience includes PR internships and freelance copywriting.



Tiffany Cox

Graduated from the University of Kent in 2013 with first-class honours in Law (Hons), finishing fifth

in her cohort. Loves to travel and learn about different cultures. Spent two weeks studying on a scholarship at the University of Kent in Paris and a month exploring central Thailand..



Toby Eccleshall

Graduated from the University of Birmingham with a BA in German and Russian Studies and subsequently completed the GDL at Brunel University. Has previously worked as an English teacher in Moscow and enjoys playing the guitar in his spare time.



Tom Bushnell

Graduated in 2012 from Trinity Hall, Cambridge with a BA (Hons) in Law. Then completed the Bar Professional Training Course at Kaplan Law School.



Vian Chowdhury

Graduated in 2011 with an MSc in Development Economics. Previously lived in Indonesia.

Introduction

Introduction

Contributed by Cravath, Swaine & Moore LLP

The litigation team at **Cravath, Swaine & Moore LLP** regularly advises clients on some of the largest and most complex matters pending in courts throughout the United States at both first instance and the appellate level, as well as in domestic and international arbitrations. The group of experienced trial lawyers offers a broad spectrum of expertise that includes antitrust, bankruptcy, corporate governance, general commercial, mergers and acquisitions, securities and intellectual property matters, as well as investigations and white-collar criminal defence. Cravath has an established reputation for representing overseas clients from a range of industries in US litigation and in domestic and international arbitrations.

The authors

New York-based chairman of the firm **Evan R Chesler** wins praise as “*one of the pre-eminent trial lawyers in the country*.” He has extensive trial and appellate experience in state and federal courts across the United States and regularly handles business critical litigation across a wide range of practice areas such as general commercial, securities, antitrust and intellectual property. Chesler also represents companies and their management in arbitrations and in connection with government and internal investigations. He has authored numerous articles related to the practice of litigation. Chesler is a fellow of the American College of Trial Lawyers and President of the Dwight Opperman Institute of Judicial Administration. He also teaches an advanced trial practice seminar at New York University School of Law.

Partner **Timothy G Cameron** offers expertise in a broad range of litigation and arbitration, including in commercial, tax, antitrust and securities matters. He has particular experience representing international clients in federal and state courts in the United States and in domestic and international arbitrations. A New Zealander, Cameron is a board member of the New York International Arbitration Center, and a published author on the subjects of dispute resolution and evidentiary law.

Overview

Litigation is becoming increasingly global. It is not unusual to have disputes related to similar issues pending in several different countries, or to be involved in a single dispute fought out in litigation across a number of different jurisdictions. Even though similar – and sometimes identical – disputes are being litigated in courts around the world, the law applied in different jurisdictions can vary significantly and greatly affect those claims. Although a detailed inquiry into the differences in the substantive law that governs such claims is beyond the scope of this book, the general structure and operation of a particular country’s legal system can also affect the outcome of a case and play an important part in shaping a client’s global litigation strategy. For that reason, the purpose of this book is to serve as a

Introduction

concise and pragmatic guide to some of the key features of different legal systems, in different countries, around the globe.

This book features information from practitioners in 64 countries around the world about the operation of the legal systems in their home countries. Their responses, organised by country, follow this introduction. Each chapter provides practical information about key aspects of litigation in a particular country that is relevant to anyone involved in, or considering, litigation there. Inside, you will find information about everything from statutes of limitations and the requirements to commence suit, to how trials and appeals are conducted. You will also find information about topics such as pretrial proceedings in the different countries, whether discovery and dispositive motions are available, and the privileges that are recognised in each jurisdiction. Additionally, this book provides information about how different countries are responding to current trends in litigation, such as representative actions, punitive damages, litigation funding and alternative dispute resolution.

In this introduction, we discuss the increasing prevalence of worldwide, multi-jurisdictional litigation, highlighting some of the interesting similarities and differences between legal systems that are revealed in the chapters, and their various approaches to alternative dispute resolution methods, all of which may be relevant when developing a litigation strategy. We also discuss what appears to be an interesting trend of more countries adopting class action litigation procedures.

More Frequent Multi-Jurisdictional Litigation

Litigation is alive and well around the world, and the ever-shrinking globe means that disputes can often wind up proceeding in a number of different countries. We expect that multi-jurisdictional litigation will continue to be a key component of some large-scale disputes and, consequently, developing a successful litigation strategy requires an understanding of the different judicial systems to which your client may be subjected.

Moreover, multi-jurisdictional cases are expanding. For example, as both physical products and technology move more easily and quickly throughout the world, disputes over issues such as intellectual property rights frequently involve litigation in several different countries. Even securities litigation claims – traditionally litigated predominantly in the US – are now more frequently being brought in other countries. While that is, presumably, partly in response to the United States Supreme Court's decision in *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), which limited the ability to bring claims in the United States related to stocks traded on a foreign exchange, it may also be driven partly by the availability of different legal systems to litigate those types of disputes and the advantages and disadvantages of each.

Varied Legal Systems Around the World

Although similar types of disputes are being litigated in many different countries, this book shows that there are a number of significant differences between the legal systems of many of the countries discussed herein. For example, one forum may provide greater confidentiality, while another has more open access to court records and proceedings. The chapters

also reflect significant differences in other ways, such as the use of expert testimony. Some countries permit parties to introduce evidence from their own expert witness while others, like Italy, approach expert testimony differently. There, a judge can appoint an expert to assist him or her in resolving factual issues and the parties can then retain their own experts to comment on and critique the results reached by the judge's expert.

However, there are also many striking similarities across many of the legal systems of the countries surveyed. To take just one example, the chapters reflect that pre-trial discovery is generally quite limited in most of the countries surveyed – the US is an obvious exception, of course – and that, even in jurisdictions that permit pre-trial discovery, taking witness testimony is generally not allowed before trial. Relatedly, and perhaps unsurprisingly, countries without pre-trial discovery generally do not have a procedure for dispositive motions.

As litigation becomes increasingly global, we believe that understanding the legal system in which you are litigating – and the similarities and differences between it and those of other countries – is an important part of developing a cohesive, global litigation strategy. Particularly because the outcome of a result in one jurisdiction may affect, whether practically or directly, the outcome of related proceedings in a different country, the stakes may be larger than just the narrow proceedings in one country, and may depend, in some part, on that country's legal system. The information collected in this book should be a good starting point to better understand those issues.

Increasing Importance of Alternative Dispute Resolution

Of course, understanding a country's legal system also means knowing how it approaches alternative dispute resolution procedures. No book on global litigation would be complete without such information, and the chapters here explain the different ways in which different legal systems use alternative dispute resolution procedures, and the interplay between those procedures and that country's judicial system.

Alternative dispute resolution procedures are, as the chapters in this book reflect, becoming widely used around the world as an efficient alternative to formal litigation. Despite their widespread acceptance, the responses are interesting because they reveal a number of differences between how countries approach alternative dispute resolution methods. Some countries favour arbitration, while mediation is more prevalent in others. Additionally, the procedure for recognising and confirming the results of arbitration or mediation can also differ dramatically between countries, as is reflected in the information about the different jurisdictions featured in this book.

Another issue that differs widely between countries is the ability to bring class action lawsuits. This form of litigation is, perhaps, often considered to be closely associated with litigation in the United States. Indeed, the chapters illustrate that many countries, such as Germany and Switzerland, do not generally permit class action lawsuits. And, even in jurisdictions like England and Wales where class actions are available, they are generally not widespread.

However, a review of the jurisdictions covered in this book reveals that representative actions are fast becoming part of the law in many different countries. Within the past few

years, an increasing number of jurisdictions have enacted legislation that permits representative actions and, in some cases, also allows litigation funding by way of contingency arrangements. For example, in February 2014, a new law took effect in France that permits certain, narrow types of ‘opt-in’ class actions. Similarly, in 2012, the law in Mexico changed to permit certain types of class action lawsuits. And this procedural device is being used - already, Mexican courts have seen class action lawsuits related to claims arising out of the Deepwater Horizon disaster and oil spill in the Gulf Coast, which may not have been possible before that legislation took effect. In Europe, the Netherlands has a relatively unique law that permits the settlement of certain multi-jurisdictional suits on a class-wide basis.

The increasing number of jurisdictions throughout the world that permit class action litigation, and the increasing use of this procedural device, presents a number of interesting strategic issues for litigants to consider.

Although the world is becoming ever smaller, as you will see from this book there are still significant differences between the legal systems in different countries. When crafting a global litigation strategy, and particularly when dealing with parallel actions in different jurisdictions, we think it important to understand the similarities and differences between those jurisdictions. We hope that you will find this book a practical and useful starting point in that analysis.