JUDICIAL LAW-MAKING IN ENGLISH AND GERMAN COURTS
For Praveetha
FOREWORD

In Western democracies like Germany and the United Kingdom, the legal product of the democratic process is legislation. Legislation has to be read, understood and applied by a wide range of people. These include individual citizens, legal advisers, administrators and judges. When disputes arise, it is judges in courts who produce the authoritative final reading. But in doing that they have regard to how others are likely to have understood a statute. They also try to make sense of the legislation in the context of a range of other norms and values. Because legislation is everywhere and intrudes upon almost every legal relationship, statutory interpretation makes up a large part of what judges do and is one of the most important aspects of their work.

Working from the inside as a judge, the exercise of interpretation often feels more like an art than a science, even though one often feels a strong implicit sense of how to proceed. Yet the desirability of predictability in the application of law, which is inherent in the ideal of the rule of law, seems to demand that an objective science of interpretation be articulated and applied. Every legal system has to address the gap between the abstract statement of a law laid down in advance and its application to the facts of a particular case. There is no simple metric for weighing the relative normative force of different factors which may be relevant to giving determinate meaning to a statutory provision in its application to specific facts. Values of justice and reasonableness can operate as rather vague guides for how that gap is to be bridged. So can constitutional principles or a sense of hierarchy between norms bearing on the same subject matter as is addressed in the statute. Courts have to face up to the tension between positive statements of law in legislation and the pull of natural justice in spelling out the precise content of the legislative norm which they will identify as applicable to determine the dispute before them.

In the final analysis, it is the legal culture in a jurisdiction, generated within that jurisdiction’s political and constitutional structures, which constrains judges in how far they feel able to go in imaginative interpretation of legislation. The ability of judges to give persuasive reasons for adopting one interpretation in preference to another is critical to the legitimacy of what they do. So some articulation of principle is required alongside the practice of interpretation, or as an inherent part of it. As Dr Brenncke explains, the use of determinate interpretative limits and techniques are important for reasons of legal certainty, upholding the proper separation of powers between judiciary and legislature.
and for the maintenance of public confidence in the judiciary. His book makes an important and sophisticated contribution to this endeavour, showing where lessons might be learned across the jurisdictional divide.

This book is a valuable study of how two jurisdictions approach the task of statutory interpretation in a complex and multivalent constitutional environment. It is the product of considerable scholarship across the two jurisdictions and a fine sensitivity to the various factors and different theoretical dimensions which inform the interpretative exercise. The exposition is clear. The argument is forceful. As with all the best works of comparative law, one reads this book and learns as much about one’s own legal system as about the system with which it is compared.

As someone familiar with the English part of the comparison, I can attest that Dr Brenncke has a fine in-depth understanding of the processes of statutory interpretation used in the English courts. The detail of his exposition of the position in Germany shows that he has no lesser understanding of such processes in that jurisdiction. This makes him a guide to be listened to with attention.

Dr Brenncke’s important theme is judicial law-making inherent in the process of statutory interpretation, and in particular the outer limits of what courts regard themselves as authorised to do in that regard. He rightly locates the practice of statutory interpretation in its constitutional setting in each jurisdiction. This important theoretical underpinning for what happens in judicial practice on the ground is sometimes obscured. The comparative approach reminds us of its importance and brings it to the fore. In Dr Brenncke’s penetrating discussion, the practice of statutory interpretation becomes the basis for insights about the constitutional environment in both jurisdictions. Exploration of the outer boundaries of permissible judicial interpretations of legislation is a powerful way of tracing the practical implications of constitutional principles.

By comparing Germany and the United Kingdom (in particular, England & Wales) using his detailed methodology, Dr Brenncke moves beyond the abstract platitudes one often finds in works which compare and emphasise the contrasts between civilian and common law jurisdictions. He reveals that there is a considerable degree of similarity in the approach of English and German judges to the practice of statutory interpretation.

That is especially so where important norms exterior to a statute have to be brought into account when reading the statute, in relation to the production of rights-consistent interpretations which take due account of specified human rights and interpretations which are required to conform, so far as possible, with EU law under the Marleasing principle. As Dr Brenncke points out, these interpretative obligations operate in tension with the desideratum of legal

---

1 Case C-106/89, Marleasing, ECLI:EU:C:1990:395.
uncertainty in giving meaning to legislation; but if that value is given undue weight it would undermine the values which are served by those obligations and would reduce the effectiveness of human rights norms and of EU Directives. As he also observes, both approaches are likely to remain significant in English law after Brexit, notwithstanding the uncertainty as we write regarding the details of the post-Brexit settlement.

Rights-consistent statutory interpretation and interpretation in conformity with EU law are areas in which the constitutional settings in Germany and the United Kingdom have converged. The shift has been more marked for the United Kingdom, as a simple model of parliamentary sovereignty (with its own, relatively simple interpretative practice) has been replaced by a much more modulated model, which allows for the intrusion of different and competing constitutional values to a significant degree. Statutory interpretation in the United Kingdom has become more constitutionalised. The balance between will and reason, which is inherent in constitutional law and in the practice of statutory interpretation, has moved in the direction of reason. The simple statement of democratic will in the text of a statute has increasingly come to be read through the prism of constitutional reason. Nowadays, statutory meaning is derived less so by reference to simple textual analysis of what the legislating Parliament said, and increasingly by reference to an objective conception of meaning achieved through purposive interpretation and standards of reasonableness. Going still further beyond this, in relation to human rights and EU law the meaning of a statute is often the product of the judges' integration of the statutory text with human rights and EU norms. As Dr Brenncke says, the approach to interpretation becomes more result-driven (to identify what is the best rights- or EU law-compatible meaning which can be given to a statute) rather than process-driven (focusing on the process by which the statute came into existence). This is an intellectual process with which German courts have long been familiar through their own experience of the practice of statutory interpretation through integration with binding higher norms set out in Germany's constitutional Basic Law. It is fascinating to see how close interpretative practices have become in the two jurisdictions. Dr Brenncke's account bears out the impression I have obtained from discussion with German judges.

However, significant differences of approach remain, as Dr Brenncke is careful to acknowledge. Ordinary, conventional statutory interpretation is not so closely aligned in the two jurisdictions: see the discussion in Chapter 2. Again, I think he is right to trace the differences back to the respective constitutional contexts and the associated legal cultures in the two jurisdictions. The roots of the difference go back very far, reflecting the long parliamentary tradition in the United Kingdom. Franz Neumann, writing in the 1930s, observed that in the British doctrine of the Rule of Law associated with Dicey "the centre of gravity lies in the determination of the content of the laws by Parliament", while the German theory of the Rechtsstaat as developed in the 19th century
“is uninterested in the genesis of the law, and is immediately concerned with the interpretation of a positive law, somehow and somewhere arisen”; “The German theory is liberal-constitutional; the English, democratic-constitutional.” No doubt the German approach has now become more interested in the democratic genesis of the law, as Dr Brenncke explains. But British statutory interpretation remains primarily concerned with identifying the meaning of legislation as intended by the enacting Parliament, while the German conception of “objectivised intention” looks more to giving sense to legislation as read in the light of the current function it is taken to fulfil and of values at the time of its application in the present. The British doctrine of treating a statute as “always speaking” is not the same. As Dr Brenncke observes, this doctrine operates to help identify the intention of the legislating Parliament; it does not justify a court in departing from that intention.

This book reveals how German and British judges in many ways think in similar legal categories and engage in similar interpretative practices, participating in a real sense in a common European legal culture. It also shows how the openness and flexibility of the English common law and parliamentary tradition, with both its positive and its negative aspects, still remains distinct from the civilian tradition and the German approach to legal science and interpretation in important respects.

Philip Sales
Lord Justice of Appeal,
England & Wales

---

Judicial Law-Making in English and German Courts addresses the often neglected relationship between statutory interpretation and constitutional law. The book is concerned with the limits of judicial power in a legal system. Judicial law-making occurs when judges restrict or extend the scope of application of a provision beyond or against the possible semantic meanings of the statutory language. How far do contemporary English and German judges go when they interpret national legislation? Where are the limits of statutory interpretation when judges venture outside the constraints of the text? Do these limits converge or diverge in both jurisdictions? The book critically analyses, reconstructs and compares judicial law-making in English and German courts from comparative, methodological and constitutional perspectives. It maps the differences and commonalities in both jurisdictions and then offers explanatory accounts for these differences and similarities based on constitutional, institutional, political, historical, cultural and international factors.

This book is addressed to a wide audience. It mainly appeals to an academic readership interested in the fields of statutory interpretation, legal methodology, constitutional law and comparative law. Practitioners in either jurisdiction will find it to be an accessible source of reference as this book reconstructs the fragmentary material on conventional, rights-consistent and EU-conforming judicial law-making in judicial opinions in English and German courts into a rational, coherent and systematic whole. Students of legal skills, constitutional law and comparative law will also find it a useful source of reference.

With regard to terminology, I use the term “case law” in a broad sense, meaning rulings of courts. The term “legislation” is solely used in this book to mean enacted law. “English courts” refers to the courts of England and Wales, and “English law” refers to the law applicable in England and Wales. The term “UK constitutional law” is used to refer to the constitutional law applicable in England. The term “provision” in this book refers to a specific section or part of a section either in primary or delegated legislation. “Construction” and “interpretation” are used interchangeably. All translations from German judgments are my own. Citations of German judgments do not link to the official reports as these are not available online, but rather to law journals where the judgments are published in full (these are available online via Beck-Online). Case law and literature are included up to 30 April 2018; Brexit-related legislation and legislative materials are included up to 1 August 2018.
I am immensely indebted to Rolf Sethe, Jens Scherpe and Matthias Lehmann, who have provided support and guidance since the initial stages of my career and of this book. My particular thanks go to colleagues who have read and provided helpful comments on full chapters of this book, Frances Burton, Ryan Murphy and Gayatri Patel, and to colleagues who have provided helpful feedback on specific parts of this book, James Brown, Andrea Dolcetti, Binesh Hass, Pieter Koornhof, Kristie Thomas and Stephen Weatherill. I owe a special debt to Binesh Hass and Pradeep Patalay. Both of them shouldered the arduous task of checking the language in the manuscript. I am very grateful to the team at Intersentia, especially Ann-Christin Maak-Scherpe for her help, encouragement and lots of patience and Rebecca Moffat for an excellent job in seeing the book through production.

I want to thank the universities where I was based while working on this book: the University of Zurich, the University of Oxford and Aston University. I am also grateful to the universities and institutes where I held visiting positions during this period: the British Institute of International and Comparative Law, the University of Cambridge, the Institute of Advanced Legal Studies and the Max Planck Institute for Comparative and International Private Law. Special thanks are due to the Fritz Thyssen Stiftung für Wissenschaftsförderung and the Deutsch-Britische Juristenvereinigung for funding my visiting fellowship at the British Institute of International and Comparative Law.

Last but not least, I would like to acknowledge the immense patience and support shown by my family and friends while I worked on this book.

Martin Brenncke
June 2018
CONTENTS

Foreword .............................................................................................................. vii
Preface .................................................................................................................. xi
List of Cases .......................................................................................................... xvii
List of Abbreviations ............................................................................................ xxxi

Chapter 1. Introduction ......................................................................................... 1
1. The Neglected Comparative Constitutional Law Perspective ....................... 3
2. Key Findings ..................................................................................................... 10
   2.1. Conventional Judicial Law-Making ......................................................... 12
   2.2. Rights-Consistent Judicial Law-Making ............................................... 15
   2.3. The European Legal Duty of Conforming Interpretation ...................... 20
   2.4. The New Legal Duty of Conforming Interpretation after Brexit .......... 26
   2.5. Trends and Convergence in Judicial Law-Making ................................. 26
3. (Ir)relevance of Limits and Techniques of Interpretation ............................. 28
4. Method and Scope of the Book ................................................................. 41

Chapter 2. Conventional Canons of Statutory Interpretation .......................... 49
1. Aim of Statutory Interpretation ..................................................................... 49
2. The Interpretative Criteria and Their Weighing ......................................... 54
   2.1. Interpretation in a Narrow Sense (Auslegung) ....................................... 54
   2.2. Canons of Interpretation in England ..................................................... 58
   2.3. Comparative Analysis .......................................................................... 66
3. Gap-Filling in Germany .................................................................................. 68
   3.1. Judicial Law-Making Praeter Legem ..................................................... 72
   3.2. Judicial Law-Making Extra Legem ....................................................... 78
   3.3. Constitutionalising the Limits of Statutory Interpretation ...................... 86
      3.3.1. Common Limits, Different Application ........................................... 87
      3.3.2. The Recognised Methods of Statutory Interpretation ................... 91
      3.3.3. The Standard of Constitutional Review: Reasonableness .......... 94
      3.3.4. Towards a Stricter Understanding of the Constitutional
             Limits of Interpretation ................................................................. 96
4. Reading In, Out or Down of Words in Legislation in England ................. 102
   4.1. Literal Rule and the Doctrine of Parliamentary Sovereignty ............. 103
   4.2. From Literalism to Purposivism .......................................................... 106
4.3. Saving Statutes from Absurdity .............................. 114
4.4. Correcting Obvious Drafting Errors ......................... 115
4.5. Updating Interpretation ................................ 119
5. Comparative Analysis ........................................ 125

Chapter 3. Rights-Consistent Interpretation .................... 139
1. Introduction .................................................. 142
  1.1. Constitution-Consistent Interpretation .................... 142
  1.2. Section 3(1) Human Rights Act .......................... 144
2. Aim of Rights-Consistent Interpretation ...................... 151
3. Relationship with Conventional Canons of Interpretation .... 154
4. Interpretative Priority ....................................... 158
5. Presumption of Compliance .................................. 159
6. Techniques of Judicial Law-Making ............................ 165
  6.1. Gap-Filling ............................................... 165
  6.2. Reading In, Out or Down of Words in Legislation ........ 166
  6.3. Comparative Analysis .................................... 173
7. Outer Interpretative Limits ................................... 179
  7.1. Constitution-Consistent Interpretation .................... 179
  7.2. Section 3(1) Human Rights Act .......................... 188
    7.2.1. Statutory Language ................................... 189
    7.2.2. Intention of Parliament and Purpose of the Legislation ... 197
    7.2.3. Fundamental Features of the Legislation ............... 208
    7.2.4. Scheme, Grain and Thrust of the Legislation .......... 213
    7.2.5. Policy Choices and Issues Calling for Legislative
            Deliberation ........................................... 216
  7.3. Comparative Analysis .................................... 223
    7.3.1. Wide Powers of Rights-Consistent Judicial Law-Making ... 225
    7.3.2. High Level of Congruence ............................. 228
    7.3.3. The Constitutional Law Perspective .................... 234
    7.3.4. Formalism ............................................ 235
    7.3.5. Evaluative Arguments ................................. 237
    7.3.6. Legal (Un)certainty ................................ 242
    7.3.7. Convergence of Judicial Reasoning .................... 245
8. A Look into the Future: A UK Bill of Rights? ................. 246

Chapter 4. The European Legal Duty of Conforming Interpretation .... 257
1. The European Dimension ..................................... 260
  1.1. Scope of the EU Legal Duty of Conforming Interpretation ... 261
  1.2. Functions of Conforming Interpretation .................... 265
  1.3. Principle of Equivalence ................................ 269
1.4. European Methodological Rules ............................................ 270
  1.4.1. Interpretative Priority of the Conforming Meaning ............. 272
  1.4.2. Presumption of Compliance ........................................... 272
  1.4.3. Relationship with National Legal Methodologies ............... 275
1.5. The Contra Legem Limit ..................................................... 277

2. Aim of Conforming Interpretation .......................................... 279

3. Relationship with Other National Canons of Interpretation .......... 288
  3.1. Interpretative Structure ................................................... 288
  3.2. Conventional Limits of Judicial Law-Making ......................... 291
    3.2.1. Rejection of a “Europeanisation from the Inside”
          in Germany .................................................................... 292
    3.2.2. Endorsement of a “Europeanisation from the Inside”
          in England ..................................................................... 295
    3.2.3. Comparative Analysis ............................................... 309
  3.3. Analogy to Rights-Consistent Interpretation ......................... 311
    3.3.1. Constitution-Consistent Interpretation in Germany .......... 311
    3.3.2. Section 3(1) Human Rights Act in England .................... 313
    3.3.3. Comparative Analysis ............................................... 316

4. Interpretative Priority in National Courts ................................ 318

5. Presumption of Compliance in National Courts ......................... 319
  5.1. The Presumption Rule in German Courts ............................... 319
  5.2. The Presumption Rule in English Courts ............................... 322
  5.3. Comparative Analysis ....................................................... 331

6. Techniques of Judicial Law-Making ......................................... 332
  6.1. Gap-Filling ...................................................................... 332
    6.1.1. Legislation Adopted for the Purpose of Transposing
           a Directive ................................................................. 332
    6.1.2. Non-Implementing Legislation that Precedes a Directive .... 338
  6.2. Reading In, Out or Down of Words in Legislation ................... 343
  6.3. Comparative Analysis ....................................................... 345

7. Outer Interpretative Limits ................................................... 347
  7.1. Limits of Conforming Judicial Law-Making in Germany .......... 348
  7.2. Limits of Conforming Judicial Law-Making in England ........... 358
    7.2.1. Intention of the Enacting Parliament ............................... 359
    7.2.2. Statutory Language ..................................................... 368
    7.2.3. Scheme and Fundamental Features of the Legislation ......... 372
  7.2.4. Unsettled Outer Limits of Conforming Interpretation .......... 374
  7.3. Comparative Analysis ....................................................... 380
    7.3.1. Development Towards Converging Outer Limits
           of Conforming Judicial Law-Making ................................ 381
    7.3.2. Evaluative Arguments and Judicial Discretion ................. 385
    7.3.3. Judicial Attitudes and the Stretching of the Outer
           Interpretative Limits .................................................... 387
7.3.4. Adaptability of the Outer Interpretative Limits ............ 392
7.3.5. Legal (Un)certainty .......................................... 393

8. A Look into the Future: Brexit ..................................... 396
  8.1. Retained EU Law .............................................. 398
  8.2. The Principle of the Supremacy of EU Law ...................... 401
  8.3. The New Legal Duty of Conforming Interpretation .......... 406
  8.4. Interpretation of Retained EU Law .............................. 413
  8.5. Transition Period ........................................... 420

Chapter 5. Conclusion .................................................. 423

Index ................................................................. 433
About the Author ...................................................... 437
LIST OF CASES

COURT OF JUSTICE OF THE EUROPEAN UNION *

Case 11/70, Internationale Handelsgesellschaft, ECLI:EU:C:1970:114 .......................... 361
Case 43/75, Defrenne v. Sabena, ECLI:EU:C:1976:56 .................................................. 305
Case 33/76, Rewe-Zentralfinanz eG and Rewe-Zentral AG
   v. Landwirtschaftskammer für das Saarland, ECLI:EU:C:1976:188 .......................... 311
Case 106/77, Amministrazione delle Finanze dello Stato v. Simmenthal,
   ECLI:EU:C:1978:49 .................................................................................. 361
Case 148/78, Ratti, ECLI:EU:C:1979:110 ................................................................. 262
Case 61/81, Commission v. United Kingdom, ECLI:EU:C:1982:258 ......................... 295
Case 14/83, von Colson and Kamann v. Land Nordrhein-Westfalen,
   ECLI:EU:C:1984:153 ............................................................................. 260, 263, 304
Case 79/83, Harz v. Deutsche Tradax, ECLI:EU:C:1984:155 ......................... 263, 304
Case 143/83, European Commission v. Denmark, ECLI:EU:C:1985:34 .................. 395
Case 152/84, Marshall v. Southampton and South West Hampshire AHA,
   ECLI:EU:C:1986:84 .................................................................................. 262, 283, 312
Case C-106/89, Marleasing v. La Comercial Internacional de Alimentación,
   ECLI:EU:C:1990:395 ............................................................................. 257, 261,
   277, 285, 303–304
Case C-91/92, Faccini Dori v. Recreb Srl, ECLI:EU:C:1994:292 ..................... 261–262, 313
Case C-334/92, Wagner Miret v. Fondo de Garantía Salarial,
   ECLI:EU:C:1993:945 ................................................................. 261, 272–274, 330
Case C-421/92, Habermann-Beltermann v. Arbeiterwohlfahrt, ECLI:EU:C:1994:187 .... 263
Case C-31/93, Webb v. EMO Air Cargo (UK) Ltd, ECLI:EU:C:1994:300 ............... 284
Case C-63/93, Duff v. Minister for Agriculture and Food and Attorney General,
   ECLI:EU:C:1996:51 .................................................................................. 394
Case C-74/95, Criminal proceedings against X, ECLI:EU:C:1996:491 .................. 264, 396
Case C-168/95, Criminal proceedings against Arcaro, ECLI:EU:C:1996:363 .... 262, 264, 396
Case C-129/96, Inter-Environnement Wallonie, ECLI:EU:C:1997:628 ................. 265
Case C-197/96, Commission v. France, ECLI:EU:C:1997:155 ................................. 267
Case C-111/97, EvoBus Austria v. Niederösterreichische Verkehrsorganisationen
   Gesellschaft mbH, ECLI:EU:C:1998:434 .............................................. 260
Case C-78/98, Preston v. Wolverhampton Healthcare NHS Trust,
   ECLI:EU:C:2000:247 ............................................................................. 311
Case C-240/98, Océano Grupo Editorial v. Roció Marciano Quintero,
   ECLI:EU:C:2000:346 ............................................................................. 261, 263, 272
Case C-443/98, Unilever Italia v. Central Food, ECLI:EU:C:2000:496 .................. 262

* Cases arranged chronologically.
List of Cases

Case C-144/99, Commission v. Netherlands, ECLI:EU:C:2001:257
Case C-62/00, Marks & Spencer plc. v. Commissioners of Customs and Excise, ECLI:EU:C:2002:435
Case C-397/01, Pfeiffer v. Deutsches Rotes Kreuz, ECLI:EU:C:2004:584
Case C-144/04, Mangold v. Helm, ECLI:EU:C:2005:709
Case C-268/06, Impact v. Minister for Agriculture and Food and others, ECLI:EU:C:2008:223
Case C-308/06, Intertanko v. Secretary of State for Transport, ECLI:EU:C:2008:312
Case C-350/06, Schultz-Hoff v. Deutsche Rentenversicherung Bund, ECLI:EU:C:2009:18
Case C-404/06, Quelle v. Bundesverband der Verbraucherzentralen und Verbraucherverbände, ECLI:EU:C:2008:231
Case C-237/07, Janecek v. Freistaat Bayern, ECLI:EU:C:2008:447
Case C-378/07, Angelidaki and Others v. Organismos Nomarkhiaki Afodiikisi Rethimnis, ECLI:EU:C:2009:250
Case C-414/07, Magoora v. Dyrektor Izby Skarbowej w Krakowie, ECLI:EU:C:2008:766
Case C-555/07, Küçükdeveci v. Swedex, ECLI:EU:C:2010:21
Case C-12/08, Mono Car Styling v. Dervis Odemis, ECLI:EU:C:2009:466
Case C-621/10, Balkan and Sea Properties v. Direktor na Direktsia "Obzhalvane i upravlenie na izpalnenieto", ECLI:EU:C:2012:248
Case C-124/12, AES-3C Maritza East 1 EOOD v. Direktor na Direktsia "Obzhalvane i upravlenie na izpalnenieto" pri Tsentralno upravlenie na Nationalnata agentzia za prihodite, Plovdiv, ECLI:EU:C:2013:488
List of Cases

Case C-142/12, Marinov v. Direktor na Direksia “Obzhalvane i upravlenie na izpahanieto”, ECLI:EU:C:2013:292 ........................................ 263
Case C-176/12, Association de médiation sociale v. Union locale des syndicats CGT,
ECLI:EU:C:2014:2 .......................................................... 278
Case C-209/12, Endress v. Allianz, ECLI:EU:C:2013:864 ........................................ 321, 351
Case C-306/12, Spedition Welter v. Avanssur, ECLI:EU:C:2013:650 ........ 257, 263, 278, 393
Case C-539/12, Lock v. British Gas Trading Ltd., ECLI:EU:C:2014:351 ..................... 325
Case C-404/13, ClientEarth v. Secretary of State for the Environment,
Food and Rural Affairs, ECLI:EU:C:2013:805 ........................................ 262, 268
Case C-395/14, Vodafone GmbH v. Bundesrepublik Deutschland, ECLI:EU:C:2016:9 .... 337
Case C-441/14, Dansk Industri (DI) v. Estate of Karsten Eigil Rasmussen,
ECLI:EU:C:2016:278 .......................................................... 262
Case C-46/15, Ambisig v. AICP, ECLI:EU:C:2016:530 ........................................ 263, 267
Case C-64/15, BP Europa v. Hauptzollamt Hamburg-Stadt,
ECLI:EU:C:2016:62 .......................................................... 269, 358, 386
Case C-187/15, Pöpperl v. Land Nordrhein-Westfalen, ECLI:EU:C:2016:550 .............. 263
Case C-231/15, Prezes Urzędu Komunikacji Elektronicznej and Petrotel v. Polkomtel,
ECLI:EU:C:2016:769 .......................................................... 394

GERMANY

BAG, NJW 1970, 725 .......................................................... 142
BAG, NJW 2003, 2473 ......................................................... 55, 72, 75
BAG, NJW 2006, 3161 .......................................................... 349, 353
BAG, NJW 2010, 557 .......................................................... 352
BAG, NJW 2012, 3529 .......................................................... 355
BAG, NJW 2014, 956 .......................................................... 72–73, 75, 354
BAG, NZA 2003, 742 ......................................................... 39, 261, 311, 318, 347, 352, 393
BAG, NZA 2004, 375 .......................................................... 342, 393
BAG, NZA 2005, 420 .......................................................... 54, 69, 75
BAG, NZA 2006, 862 .......................................................... 262, 289, 311, 318, 349, 352
BAG, NZA 2007, 751 .......................................................... 72–73
BAG, NZA 2009, 378 .......................................................... 262
BAG, NZA 2009, 1020 .......................................................... 273
BAG, NZA 2010, 227 .......................................................... 186
BAG, NZA 2012, 514 .......................................................... 355
BAG, NZA-RR 2013, 515 ....................................................... 54, 71

BGH, BeckRS 2012, 16505 ................................................... 230
BGH, GRUR 2002, 238 .......................................................... 72
BGH, NJW 1952, 337 .......................................................... 68
BGH, NJW 1953, 780 .......................................................... 77–78
BGH, NJW 1954, 1153 .......................................................... 68
BGH, NJW 1955, 1276 (Tonband) ............................................. 58, 68, 73, 75, 92–93

Intersentia
List of Cases

BGH, NJW 1955, 1433 (Fotokopie) .............................................. 58, 73–74, 92
BGH, NJW 1958, 827 (Herrenreiter) ........................................ 80
BGH, NJW 1963, 902 (Fernsehansagerin) ................................. 58, 73, 79–81
BGH, NJW 1967, 343 ................................................................. 49, 51, 56–58
BGH, NJW 1969, 98 ................................................................. 222
BGH, NJW 1970, 2017 ................................................................. 222
BGH, NJW 1975, 213 ................................................................. 279, 319
BGH, NJW 1981, 1726 .............................................................. 55, 73
BGH, NJW 1988, 2109 .............................................................. 72, 78, 85
BGH, NJW 1994, 457 ................................................................. 58
BGH, NJW 2000, 521 (Heininger I) ........................................... 294, 341
BGH, NJW 2002, 1881 (Heininger II) ....................................... 294, 341
BGH, NJW 2003, 1032 (Macrotron) ......................................... 77
BGH, NJW 2006, 2997 ............................................................... 75
BGH, NJW 2006, 3200 (Quelle I) ............................................. 292, 341, 352
BGH, NJW 2007, 992 ............................................................... 78, 85
BGH, NJW 2007, 2419 (Rügeverkümperung) .......................... 82
BGH, NJW 2008, 2257 ............................................................. 72, 75
BGH, NJW 2008, 3213 (Dreiteilungsmethode) ....................... 96
BGH, NJW 2009, 427 (Quelle II) ............................................. 54, 57, 71, 261, 279, 292–293, 310, 319, 332, 334, 342, 347, 348–350, 353, 393
BGH, NJW 2009, 1962 (Schiedsfähigkeit II) ............................ 30, 188
BGH, NJW 2012, 2422 ............................................................. 265
BGH, NJW 2014, 146 (FRoSTA) ............................................... 77
BGH, NJW 2015, 1023 (Lebensversicherung im Antragsmodell) .............................................................................. 351
BGH, NJW 2015, 3511 (Elektronische Leseplätze II) ................. 338
BGH, NJW 2016, 1718 (Gasversorgung II) .............................. 71, 99, 349, 356–357
BGH, NJW 2017, 1093 ............................................................. 57, 319, 349–350
BGH, NJW 2017, 2123 ............................................................. 68
BGH, NJW 2017, 2842 ............................................................. 238
BGH, NJW 2017, 3387 ............................................................. 342
BGH, NVwZ 2014, 1111 ........................................................... 45, 87
BGH, ZUM 2010, 429 (Bob Dylan (No. 2)) .......................... 292, 338, 349
BVerfG, BeckRS 2016, 47202 ............................................... 68, 231
BVerfG, BeckRS 2017, 136546 .................................................. 318
BVerfG, BeckRS 2018, 11032 .................................................. 57
BVerfG, decision of 16.2.2012, no. 1 BvR 127/10 ...................... 94
BVerfG, FamRZ 2015, 1263 ....................................................... 140
BVerfG, judgment of 31.20.2016, no. 1 BvR 871/13 ................. 46

Intersentia
List of Cases

BVerfG, NJW 1953, 1057 ................................................................. 143
BVerfG, NJW 1954, 65 ................................................................. 70
BVerfG, NJW 1958, 257 (Lüth) .................................................. 161
BVerfG, NJW 1958, 1227 ............................................................. 87, 158, 180, 184
BVerfG, NJW 1958, 1388 ............................................................. 142
BVerfG, NJW 1958, 2059 ............................................................. 86, 183
BVerfG, NJW 1959, 1123 ............................................................. 158, 179–180
BVerfG, NJW 1960, 1563 ............................................................. 49, 51–53, 56, 58
BVerfG, NJW 1962, 1715 ............................................................. 55, 68
BVerfG, NJW 1964, 1563 ............................................................. 183
BVerfG, NJW 1965, 1427 ............................................................. 142, 158, 161
BVerfG, NJW 1966, 243 ............................................................... 166
BVerfG, NJW 1972, 25 ................................................................. 160
BVerfG, NJW 1972, 1123 ............................................................. 158
BVerfG, NJW 1972, 1934 ............................................................. 179
BVerfG, NJW 1973, 1221 (Soraya) ............................................... 31, 58, 69, 73, 78–79,
                                                                       81–82, 84, 86, 88, 222, 238
BVerfG, NJW 1973, 1491 ............................................................. 55–56, 68,
                                                                       86–87, 142, 155, 158, 160
BVerfG, NJW 1975, 1355 ............................................................. 86, 158
BVerfG, NJW 1978, 2499 ............................................................. 86, 87
BVerfG, NJW 1979, 151 ............................................................... 35, 37, 143, 158, 180
BVerfG, NJW 1979, 305 (Sachverständigenhaftung) .................... 36, 68, 87–88, 126
BVerfG, NJW 1979, 534 ............................................................... 161
BVerfG, NJW 1979, 1925 ............................................................. 37
BVerfG, NJW 1980, 2179 ............................................................. 143
BVerfG, NJW 1981, 39 ................................................................. 57, 87, 183
BVerfG, NJW 1982, 1375 ............................................................. 179–180
BVerfG, NJW 1982, 1509 ............................................................. 180
BVerfG, NJW 1983, 735 ............................................................... 52
BVerfG, NJW 1983, 2811 ............................................................. 158
BVerfG, NJW 1984, 475 (Sozialplan) .......................................... 55, 69, 85, 101
BVerfG, NJW 1985, 1519 ............................................................. 143, 180
BVerfG, NJW 1985, 2315 ............................................................. 142, 179, 183
BVerfG, NJW 1985, 2395 ............................................................. 86
BVerfG, NJW 1985, 2939 ............................................................. 69
BVerfG, NJW 1986, 1672 ............................................................. 87
BVerfG, NJW 1987, 2427 ............................................................. 140
BVerfG, NJW 1988, 125 ............................................................... 142
BVerfG, NJW 1988, 1902 ............................................................. 87
BVerfG, NJW 1990, 1593 ............................................................. 3–4, 31, 35, 58,
                                                                       69, 73–75, 81, 87, 90,
                                                                       94–95, 126, 226, 238
BVerfG, NJW 1991, 1807 ............................................................. 143
BVerfG, NJW 1991, 2549 ............................................................. 41, 79, 89
BVerfG, NJW 1992, 890 (Eilversammlungen) ............................ 180–181, 184
BVerfG, NJW 1992, 1219 ............................................................. 92
BVerfG, NJW 1992, 2947 ............................................................. 143, 158
BVerfG, NJW 1993, 996 ............................................................... 79, 94
BVerfG, NJW 1993, 1379 (Streikeinsatz von Beamten) .............. 89
List of Cases

BVerfG, NJW 1993, 2861 ................................. 55, 72–73, 75, 91, 142–143, 158, 165, 179
BVerfG, NJW 1994, 2475 ................................. .87, 143, 183
BVerfG, NJW 1995, 1141 ................................. 88
BVerfG, NJW 1997, 386 ................................. 30
BVerfG, NJW 1998, 519 (Kind als Schaden) ................................. 6, 49, 58, 73, 81, 86–87, 91, 109, 383
BVerfG, NJW 1998, 1478 ................................. .55, 142
BVerfG, NJW 1998, 1699 ................................. 143
BVerfG, NJW 1998, 2269 ................................. .71, 73, 88
BVerfG, NJW 1998, 3033 ................................. 183
BVerfG, NJW 1999, 1853 ................................. 183, 348
BVerfG, NJW 2000, 55 ................................. 179
BVerfG, NJW 2000, 347 ................................. 86, 98, 158, 179, 183
BVerfG, NJW 2000, 1175 ................................. 179
BVerfG, NJW 2002, 1779 ................................. .44, 51, 56, 68, 88
BVerfG, NJW 2003, 2520 ................................. .88–99
BVerfG, NJW 2004, 750 ................................. .57, 87, 126
BVerfG, NJW 2004, 1305 (Geldwäsche durch Strafverteidiger) ................................. 142–143, 160, 165, 179, 183
BVerfG, NJW 2004, 3407 (Görgülü) ................................. 140
BVerfG, NJW 2005, 126 ................................. .35–37, 58
BVerfG, NJW 2005, 1923 ................................. 158
BVerfG, NJW 2006, 3340 ................................. 87, 126
BVerfG, NJW 2007, 2977 (Strafzumessung durch Revisionsgerichte) ................................. .87, 98, 143, 183
BVerfG, NJW 2008, 2409 ................................. .70
BVerfG, NJW 2009, 499 ................................. 98
BVerfG, NJW 2011, 819 ................................. .96
BVerfG, NJW 2011, 842 (Dreiteilungsmethode) ................................. .6, 57, 86–87, 91, 96–99, 101, 348
BVerfG, NJW 2011, 1723 ................................. .73, 87, 94, 98
BVerfG, NJW 2012, 2639 ................................. .88–89
BVerfG, NJW 2012, 3081 (Delisting) ................................. .49, 55, 57, 73, 77, 86–87, 91, 94–95, 98–99, 348
BVerfG, NJW 2013, 1058 (Deal im Strafprozess) ................................. .49, 51, 56, 58, 68, 87, 90
BVerfG, NJW 2014, 1874 (Flashmob) ................................. .78
BVerfG, NJW 2015, 1294 ................................. 342
BVerfG, NJW 2015, 1359 (Kopftuch) ................................. .58, 140, 155, 183, 185–186, 188
BVerfG, NJW 2015, 1506 (Scheinvater) ................................. .88–89
BVerfG, NJW 2015, 2549 ................................. .44
BVerfG, NJW 2015, 2949 ................................. .94, 158, 160
List of Cases

BVerfG, NVwZ 1996, 574 ............................................. 91, 158, 180
BVerfG, NVwZ 2009, 1484 ........................................ 89
BVerfG, NVwZ 2010, 373 ........................................ 92
BVerfG, NVwZ 2015, 510 ........................................ 57–58, 142, 165, 179, 183–184
BVerfG, NVwZ 2017, 617 ........................................ 70
BVerfG, NZA 2015, 375 ........................................ 294
BVerfG, NZA 2015, 1117 ........................................ 79
BVerfG, NZS 2011, 18 ........................................ 94, 96
BVerfG, NZS 2011, 895 ........................................ 89
BVerfG, NZS 2015, 502 ........................................ 73, 89
BVerfG, WM 2017, 154, 155 ...................................... 86

BVerwG, DVBl 2004, 1379 ........................................ 45
BVerwG, judgment of 29.1.2004, no. 3 C 39.03 ............... 261, 291, 318
BVerwG, judgment of 10.08.2016, no. 1 B 82/16 (1 PKH 76.16) .... 87
BVerwG, NJW 1964, 1586 ........................................ 142
BVerwG, NJW 2005, 1293 ........................................ 73
BVerwG, NVwZ 1997, 384 ........................................ 142, 161
BVerwG, NVwZ 1998, 60 ........................................ 184
BVerwG, NVwZ 2002, 858 ........................................ 318
BVerwG, NVwZ 2003, 986 ........................................ 88
BVerwG, NVwZ 2014, 1586 ...................................... 292, 337

LG Hamburg, decision of 1.2.1988, no. 11 S 398/87 .................... 74

UNITED KINGDOM

9 Cornwall Crescent London Ltd. v. Kensington and Chelsea RLBC
[2005] EWCA Civ 324 ............................................. 60
A v. BBC [2014] UKSC 25 ......................................... 156
Abley v. Dale (1851) 11 Common Bench Reports 378 ............. 106
Adler v. George [1964] 2 QB 7 (CA) ................................ 114
Advocate General for Scotland v. MacDonald [2003] UKHL 34 .... 53
Ahmed and others v. HM Treasury [2010] UKSC 2 ................. 153, 190, 201, 248, 250

Airtours Holidays Transport v. Revenue and Customs Commissioners
[2016] UKSC 21 ......................................................... 282, 348
Alderson v. Secretary of State for Trade and Industry [2003] EWCA Civ 1767 .... 300, 318
Anisminic v. Foreign Compensation Commission [1969] 2 AC 147 (HL) .... 251, 255
AS (Somalia) v. Secretary of State for the Home Department [2009] UKHL 32 .... 193, 196

Associated Newspapers Ltd. v. Wilson [1995] 2 AC 454 (HL) ........ 62, 104

Attorney-General v. Prince Ernest Augustus of Hanover [1957] AC 436 (HL) .... 52, 63, 273
Attorney-General v. Sillem (1864) 2 H & C 431 ................................ 106
List of Cases

Austin v. Mayor and Burgesses of the London Borough of Southwark
[2010] UKSC 28 ................................................................. 417

AXA General Insurance Ltd. v. Lord Advocate [2011] UKSC 46 ........ 110, 125, 248, 256

Axa UK Plc. v. Revenue and Customs Commissioners [2011] EWCA Civ 1607 .... 322

B (a child) v. DPP [2000] 2 AC 428 (HL) ........................................ 4

B (Algeria) v. Secretary of State for the Home Department [2018] UKSC 5 .... 251


Bear Scotland Ltd. v. Fulton [2015] ICR 221 ............................... 322

Bearmans Ltd. v. Metropolitan Police District Receiver [1961] 1 WLR 634 (CA) .... 60


Benkharbouche v. Embassy of Sudan [2015] EWCA Civ 33 ............ 145, 210, 223, 373

Birmingham City Council v. Doherty [2008] UKHL 57 .................. 191

Birmingham Hippodrome Theatre Trust Ltd. v. Revenue and Customs
Commissioners [2014] EWCA Civ 684 .................................... 285, 345

Black-Clawson International v. Papierwerke Waldhof-Aschaffenburg

Blackwood v. Birmingham and Solihull Mental Health NHS
Foundation Trust [2016] EWCA Civ 607 ..................................... 45, 290, 359, 373

Bloomsbury International Ltd. v. Sea Fish Industry Authority [2011] UKSC 25 .... 60, 62

Bogdanic v. The Secretary of State for the Home Department
[2014] EWHC 2872 (QB) ..................................................... 44, 102


Cachia v. Faluyi [2001] EWCA Civ 998 ....................................... 156

Carter v. Bradbeer [1975] 1 WLR 1204 (HL) ................................. 61, 63, 106


Cartier International AG v. British Sky Broadcasting Ltd. 
[2016] EWCA Civ 658 .......................................................... 290, 299


Churchill Insurance Co. Ltd. v. Fitzgerald & Wilkinson

Clark & Tokeley Ltd. (t/a Spellbrook) v. Oakes [1999] ICR 276 (CA) ...... 60

Clarke v. Kato [1998] 1 WLR 1647 (HL) ...................................... 102, 289, 308

Cooper v. HM Attorney General [2010] EWCA Civ 464 .......................... 347

Crook v. Edmondson [1966] 2 QB 81 (CA) ................................... 128

Cutler v. Wandsworth Stadium Ltd. [1949] AC 398 (HL) .................. 108

Dabas v. High Court of Justice in Madrid [2007] UKHL 6 .................. 314

Day v. Lewisham and Greenwich NHS Trust [2017] EWCA Civ 329 .... 113

Digital Satellite Warranty Cover Ltd. v. The Financial Services Authority
[2011] EWCA Civ 1413 ...................................................... 45, 314


Director of the Serious Fraud Office v. B [2012] EWCA Crim 901 .......... 118

DPP of Jamaica v. Mollison [2003] UKPC 6 ................................... 6
Duport Steels Ltd. v. Sirs [1980] 1 All ER 529 (HL) ............. 6, 32, 51, 61, 104, 238–239
EB Central Services Ltd. v. Revenue and Customs Commissioners
[2008] EWCA Civ 486 ........................................ 322, 343, 373, 377
EBR Attridge Law LLP v. Coleman [2010] ICR 242 ............ 265, 343
Ellen Street Estates v. Minister of Health [1934] 1 KB 590 (CA) ............. 5, 204
EN (Serbia) v. Secretary of State for the Home Department
[2009] EWCA Civ 630 ........................................ 280, 290, 323
English v. Thomas Sanderson Blinds Ltd. [2008] EWCA Civ 1421 ............. 374
F Hoffmann-La Roche & Co. v. Secretary of State for Trade and Industry
[1975] AC 295 (HL) ........................................ 306
Finnegan v. Clowney Youth Training Programme Ltd. [1990] 2 AC 407 (HL) ............. 304
Fitzpatrick v. Sterling Housing Association Ltd. [2001] 1 AC 27 (HL) ............. 2–3, 52,
120–122, 124, 126, 167, 190
Fleming (t/a Bodycraft) v. Customs and Excise Commissioners
[2006] EWCA Civ 70 ........................................ 34, 177, 343, 345, 369
Fleming (t/a Bodycraft) v. Customs and Excise Commissioners [2008] UKHL 2 ....... 378
Football Association Premier League Ltd. v. QC Leisure
[2012] EWCA Civ 1708 ........................................ 282, 327, 369
Football Association Premier League Ltd. v. QC Leisure
[2012] EWHC 108 (Ch) ........................................ 45, 327, 329
Ghaidan v. Godin-Mendoza [2004] UKHL 30 ......... 3–4, 39, 144–147,
152–153, 155–156, 159, 162, 167–170, 172, 178, 181, 188–195,
197–198, 200, 202–203, 205, 208, 210–211, 213–217, 220–221, 227,
229, 299, 313, 343
Google Inc. v. Vidal-Hall [2015] EWCA Civ 311 ............. 45, 314, 343,
347, 372, 375–377
Greenweb Ltd. v. London Borough of Wandsworth [2008] EWCA Civ 910 .... 113, 118, 128
Hamnett v. Essex County Council [2017] EWCA Civ 6 ............. 5
Hampshire v. Board of the Pension Protection Fund [2016] EWCA Civ 786 .......... 45, 372
Hemming (t/a Simply Pleasure Ltd) v. Westminster City Council
[2013] EWCA Civ 591 ........................................ 298–299
Hill v. East and West India Dock Co. (1884) 9 AC 448 (HL) ............. 106
Holden & Co v. Crown Prosecution Service (No. 2) [1994] 1 AC 22 (HL) .... 112, 128
Holmes v. Bradfield Rural District Council [1949] 2 KB 1 ......... 61
Horton v. Sadler [2006] UKHL 27 ................................ 65
Howe v. Motor Insurers’ Bureau [2017] EWCA Civ 932 .......... 258, 299, 374
In re S (Minors) [2001] EWCA Civ 757 ................................ 209
In re S (Minors) [2002] UKHL 10 ................................ 145, 147, 156,
169, 188, 194, 208–209, 218
Inco Europe Ltd. v. First Choice Distribution [2000] 1 WLR 586 (HL) .... 102, 115–116, 118
<table>
<thead>
<tr>
<th>List of Cases</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Inland Revenue Commissioners v. Hinchy [1960] AC 748 (HL)</td>
<td>53</td>
</tr>
<tr>
<td>Inland Revenue Commissioners v. McGuckian [1997] 1 WLR 991 (HL)</td>
<td>106</td>
</tr>
<tr>
<td>ITV Broadcasting Ltd. v. TV Catchup Ltd. (No. 2) [2011] EWHC 1874</td>
<td>260, 299, 323, 343</td>
</tr>
<tr>
<td>ITV Broadcasting Ltd. v. TV Catchup Ltd. [2015] EWCA Civ 204</td>
<td>45, 324, 343, 372, 374, 384</td>
</tr>
<tr>
<td>Johnson v. Medical Defence Union Ltd. [2007] EWCA Civ 262</td>
<td>383</td>
</tr>
<tr>
<td>Johnson v. Moreton [1980] AC 37 (HL)</td>
<td>103, 106</td>
</tr>
<tr>
<td>Jones v. Director of Public Prosecutions [1962] AC 635 (HL)</td>
<td>103</td>
</tr>
<tr>
<td>Jones v. Secretary of State for Social Services [1972] AC 944 (HL)</td>
<td>61</td>
</tr>
<tr>
<td>Kammins Ballrooms Co Ltd. v. Zenith Investments (Torquay) Ltd.</td>
<td></td>
</tr>
<tr>
<td>[1971] AC 850 (HL)</td>
<td>103, 117</td>
</tr>
<tr>
<td>Kay Green v. Twinsectra Ltd. [1996] 1 WLR 1587 (CA)</td>
<td>113</td>
</tr>
<tr>
<td>Lehman Brothers International (Europe) (In Administration), Re</td>
<td>2012</td>
</tr>
<tr>
<td>Leicester v. Pearson [1952] 2 QB 668</td>
<td>113</td>
</tr>
<tr>
<td>Littlewoods Ltd. v. Revenue and Customs Commissioners [2015] EWCA Civ 515</td>
<td>374</td>
</tr>
<tr>
<td>Littlewoods Retail Ltd. v. Revenue and Customs Commissioners [2010] EWHC 1071</td>
<td>359</td>
</tr>
<tr>
<td>Macarthys Ltd. v. Smith [1979] ICR 785 (CA)</td>
<td>363</td>
</tr>
<tr>
<td>Macarthys Ltd. v. Smith [1981] QB 180 (CA)</td>
<td>63, 305</td>
</tr>
<tr>
<td>Madzimbamuto v. Lardner Burke [1969] 1 AC 645 (PC)</td>
<td>5</td>
</tr>
<tr>
<td>Magor and St Mellons Rural DC v. Newport Corporation [1950] 2 All ER 1226</td>
<td>129</td>
</tr>
<tr>
<td>McCartan Turkington Breen v. Times Newspapers Ltd. [2001] 2 AC 277 (HL)</td>
<td>52, 124</td>
</tr>
<tr>
<td>McDonald v. McDonald [2016] UKSC 28</td>
<td>194, 214</td>
</tr>
<tr>
<td>Monro v. Revenue and Customs Commissioners [2008] EWCA Civ 306</td>
<td>105</td>
</tr>
<tr>
<td>Moolan v. Lord Advocate [2014] UKSC 67</td>
<td>110</td>
</tr>
<tr>
<td>Moreno v. The Motor Insurers’ Bureau [2016] UKSC 52</td>
<td>282, 324</td>
</tr>
<tr>
<td>Nairn v. University of St Andrews [1909] AC 147 (HL)</td>
<td>249</td>
</tr>
<tr>
<td>NHS Leeds v. Larner [2012] EWCA Civ 1034.</td>
<td>343</td>
</tr>
<tr>
<td>O’Brien v. Ministry of Justice [2015] EWCA Civ 1000</td>
<td>347, 368, 374</td>
</tr>
<tr>
<td>Oakley Inc. v. Animal Ltd. [2005] EWCA Civ 1191</td>
<td>260, 323</td>
</tr>
<tr>
<td>Oliver Ashworth (Holdings) Ltd. v. Ballard (Kent) Ltd. [2000] Ch. 12 (CA)</td>
<td>58, 60, 62–63</td>
</tr>
<tr>
<td>Pepper v. Hart [1993] AC 593 (HL)</td>
<td>60, 62, 64</td>
</tr>
<tr>
<td>Percy v. Church of Scotland Board of National Mission [2005] UKHL 73</td>
<td>378</td>
</tr>
</tbody>
</table>

xxvi

Intersentia
Pham v. Secretary of State for the Home Department [2015] UKSC 19
Pickstone v. Freemans Plc [1987] 3 WLR 811 (CA)
Pinner v. Everett [1969] 1 WLR 1266 (HL)
Pomiechowski v. District Court of Legnica [2012] UKSC 20
Poplar Housing and Regeneration Community Association Ltd.
v. Donoghue [2001] EWCA Civ 595
Post Office v. Estuary Radio Ltd. [1968] 2 QB 740 (CA)
Principal Reporter v. K [2010] UKSC 56
Prudential Assurance Co Ltd. v. Revenue and Customs Commissioners
[2013] EWHC 3249
Prudential Assurance Co. Ltd. v. Revenue and Customs Commissioners
[2016] EWCA Civ 376
R. v. A (No. 2) [2001] UKHL 25
R. v. D [2011] EWCA Crim 2082
R. v. Ireland [1998] AC 147 (HL)
R. v. Kirkup [1993] 1 WLR 774 (CA)
R. v. Lambert [2001] UKHL 37
R. v. Montilla [2004] UKHL 50
R. (Anderson) v. Secretary of State for the Home Department
[2002] UKHL 46
R. (Animal Defenders International) v. Secretary of State for culture, media and sport [2008] UKHL 15
R. (Brind) v. Secretary of State for the Home Department [1991] 1 AC 696 (HL)
R. (Cart) v. Upper Tribunal [2011] UKSC 28
R. (Chester) v. Secretary of State for Justice [2013] UKSC 63
R. (Chief Constable of Staffordshire) v. Stafford Crown Court
[1999] 1 WLR 398 (QB)
R. (Confederation of Passenger Transport UK) v. Humber Bridge Board
[2003] EWCA Civ 842
R. (Countryside Alliance) v. Attorney General [2005] EWHC 1677 (Admin)
R. (Doody) v. Secretary of State for the Home Department [1994] 1 AC 531 (HL)
R. (Edison First Power Ltd.) v. Central Valuation Officer [2003] UKHL 20
R. (Factortame (No. 1)) v. Secretary of State for Transport [1990] 2 AC 85 (HL)
R. (Factortame (No. 2)) v. Secretary of State for Transport
[1991] 1 AC 603 (HL)
<table>
<thead>
<tr>
<th>Case</th>
<th>Volume, Page(s)</th>
<th>Year(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>R. (Fire Brigades Union) v. Secretary of State for the Home Department</td>
<td>[1995] 2 AC 513 (HL)</td>
<td>5–6</td>
</tr>
<tr>
<td>R. (Francis &amp; Francis) v. Central Criminal Court</td>
<td>[1989] AC 346 (HL)</td>
<td>61, 102–103</td>
</tr>
<tr>
<td>R. (Gillan) v. Commissioner of Police of the Metropolis</td>
<td>[2006] UKHL 12</td>
<td>250</td>
</tr>
<tr>
<td>R. (Hammond) v. Secretary of State for the Home Department</td>
<td>[2004] EWHC 2753 (Admin)</td>
<td>231</td>
</tr>
<tr>
<td>R. (Hammond) v. Secretary of State for the Home Department</td>
<td>[2005] UKHL 69</td>
<td>148</td>
</tr>
<tr>
<td>R. (Hurst) v. Commissioner of Police of the Metropolis</td>
<td>[2007] UKHL 13</td>
<td>155, 190, 290, 314</td>
</tr>
<tr>
<td>R. (Irving) v. Secretary of State for Transport</td>
<td>[2008] EWHC 1200</td>
<td>359</td>
</tr>
<tr>
<td>R. (Kehbiline) v. Director of Public Prosecutions</td>
<td>[2000] 2 AC 326 (HL)</td>
<td>146</td>
</tr>
<tr>
<td>R. (Kelly) v. Secretary of State for Justice</td>
<td>[2008] EWCNA Civ 177</td>
<td>107, 112, 115, 118</td>
</tr>
<tr>
<td>R. (M) v. Hammersmith and Fulham London Borough Council</td>
<td>(1998) 30 HLR 10 (CA)</td>
<td>53</td>
</tr>
<tr>
<td>R. (Nutricia Ltd.) v. Secretary of State for Health</td>
<td>[2015] EWHC 2285</td>
<td>267, 300</td>
</tr>
<tr>
<td>R. (Osborn) v. Parole Board</td>
<td>[2013] UKSC 61</td>
<td>249</td>
</tr>
<tr>
<td>R. (Pierson) v. Secretary of State for the Home Department</td>
<td>[1998] AC 539 (HL)</td>
<td>31, 249</td>
</tr>
<tr>
<td>R. (Reilly) v. Secretary of State for Work and Pensions</td>
<td>[2016] EWCNA Civ 413</td>
<td>193</td>
</tr>
<tr>
<td>R. (Roszkowski) v. Secretary of State for the Home Department</td>
<td>[2017] EWCNA Civ 1893</td>
<td>250</td>
</tr>
<tr>
<td>R. (Shah) v. Barnet LBC</td>
<td>[1983] 2 AC 309 (HL)</td>
<td>126</td>
</tr>
</tbody>
</table>
R. (Simms) v. Secretary of State for the Home Department
[2000] 2 AC 115 (HL) 149, 163, 201, 248–250, 315
R. (Unison) v. Lord Chancellor [2017] UKSC 51 35
R. (Wright) v. Secretary of State for Health [2007] EWCA Civ 999 152, 282
R. (Wright) v. Secretary of State for Health [2009] UKHL 3 214
River Wear Commissioners v. Adamson (1887) 2 App. Cas. 743 62
Robertson v. Swift [2014] UKSC 50 45, 60, 261, 280, 314
Royal College of Nursing of the United Kingdom v. Department of Health and Social Security [1981] AC 800 (HL) 120–124
Russell v. TransOcean International Resources Ltd. [2011] UKSC 57 282
Seaforth Court Estates Ltd. v. Asher [1949] 2 KB 481 (CA) 129
Secretary of State for Defence v. Guardian Newspaper Ltd. [1985] AC 339 (HL) 128
Secretary of State for the Home Department v. AF [2009] UKHL 28 146, 148, 194, 196
Secretary of State for the Home Department v. GG [2009] EWCA Civ 786 248
Secretary of State for the Home Department v. JJ [2007] UKHL 45 146
Secretary of State for the Home Department v. MB [2007] UKHL 46 196
Shanning International Ltd. v. Lloys TSB Bank plc [2001] UKHL 31 128
Sheldon v. RHM Outhwaite (Underwriting Agencies) Ltd. [1996] AC 102 (HL) 60
Simms v. Registrar of Probates [1900] AC 323 (PC) 61
Steele Ford & Newton v. Crown Prosecution Service (No. 2) [1994] 1 AC 22 (HL) 128
Stevenson v. Rogers [1999] QB 1028 (CA) 60
Test Claimants in the FII Group Litigation v. Revenue and Customs Commissioners [2010] EWCA Civ 103 299, 326
Test Claimants in the FII Group Litigation v. Revenue and Customs Commissioners [2016] EWCA Civ 1180 299, 368
The United States of America v. Nolan [2014] EWCA Civ 71 336
The United States of America v. Nolan [2015] UKSC 63 374
List of Cases

TV Broadcasting Ltd. v. TV Catchup Ltd. [2015] EWCA Civ 204 .......................... 299
Vacher & Sons v. London society of compositors [1913] AC 107 (HL) ............... 59, 103
Victor Chandler International Ltd. v. Customs and Excise Commissioners
  [2000] 1 WLR 1296 (CA) ................................................................. 124
Vodafone 2 v. Revenue and Customs Commissioners [2008] EWHC 1569 ............. 359, 373–374
Watkins v. Secretary of State for the Home Department [2006] UKHL 17 ............ 139, 249
Webb v. EMO Air Cargo (UK) Ltd. (No. 2) [1995] 4 All ER 577 (HL) ................. 284
Webb v. EMO Air Cargo (UK) Ltd. [1992] 2 All ER 43 (CA) ................................. 284
Webb v. EMO Air Cargo (UK) Ltd. [1992] 4 All ER 929 (HL) ............................. 284
West Mercia Constabulary v. Wagener [1982] 1 WLR 127 .................................... 113
White v. White [2001] UKHL 9 ............................................................... 281
Wilson v. First County Trust Ltd. (No. 2) [2003] UKHL 40 ................................. 51, 53, 58, 63, 65, 67–68, 145–146, 152, 163, 192
Yarl’s Wood Immigration Ltd. v. Bedfordshire Police Authority
  [2009] EWCA Civ 110 ................................................................. 128
# LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AcP</td>
<td>Archiv für die civilistische Praxis</td>
</tr>
<tr>
<td>AG</td>
<td>Advocate General</td>
</tr>
<tr>
<td>AJCL</td>
<td>American Journal of Comparative Law</td>
</tr>
<tr>
<td>All ER</td>
<td>All England Law Reports</td>
</tr>
<tr>
<td>AöR</td>
<td>Archiv des öffentlichen Rechts</td>
</tr>
<tr>
<td>AP</td>
<td>Arbeitsrechtliche Praxis</td>
</tr>
<tr>
<td>art.</td>
<td>article</td>
</tr>
<tr>
<td>BAG</td>
<td>Bundesarbeitsgericht (German Federal Labour Court)</td>
</tr>
<tr>
<td>BeckRS</td>
<td>Beck online Rechtsprechung</td>
</tr>
<tr>
<td>BGB</td>
<td>Bürgerliches Gesetzbuch (German Civil Code)</td>
</tr>
<tr>
<td>BGH</td>
<td>Bundesgerichtshof (German Federal Court of Justice)</td>
</tr>
<tr>
<td>BSG</td>
<td>Bundessozialgericht (German Federal Social Court)</td>
</tr>
<tr>
<td>BVerfG</td>
<td>Bundesverfassungsgericht (German Federal Constitutional Court)</td>
</tr>
<tr>
<td>BVerfGG</td>
<td>Bundesverfassungsgerichtsgesetz (Act on the German Federal Constitutional Court)</td>
</tr>
<tr>
<td>BVerwG</td>
<td>Bundesverwaltungsgericht (German Federal Administrative Court)</td>
</tr>
<tr>
<td>CA</td>
<td>Court of Appeal of England and Wales</td>
</tr>
<tr>
<td>Cf.</td>
<td>Compare</td>
</tr>
<tr>
<td>CJEU</td>
<td>Court of Justice of the European Union</td>
</tr>
<tr>
<td>CLJ</td>
<td>Cambridge Law Journal</td>
</tr>
<tr>
<td>CMLR</td>
<td>Common Market Law Review</td>
</tr>
<tr>
<td>CUP</td>
<td>Cambridge University Press</td>
</tr>
<tr>
<td>Deb.</td>
<td>Debates</td>
</tr>
<tr>
<td>DöV</td>
<td>Die öffentliche Verwaltung</td>
</tr>
<tr>
<td>DVBl</td>
<td>Deutsches Verwaltungsblatt</td>
</tr>
<tr>
<td>EBLR</td>
<td>European Business Law Review</td>
</tr>
<tr>
<td>ECA</td>
<td>European Communities Act 1972</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>EEC</td>
<td>(Treaty establishing the) European Economic Community</td>
</tr>
<tr>
<td>EHRLR</td>
<td>European Human Rights Law Review</td>
</tr>
<tr>
<td>EHRR</td>
<td>European Human Rights Reports</td>
</tr>
<tr>
<td>EJIL</td>
<td>European Journal of International Law</td>
</tr>
<tr>
<td>ELJ</td>
<td>European Law Journal</td>
</tr>
<tr>
<td>ELR</td>
<td>European Law Review</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>EuGRZ</td>
<td>Europäische Grundrechte-Zeitschrift</td>
</tr>
<tr>
<td>EuR</td>
<td>Europarecht</td>
</tr>
<tr>
<td>EU(W) Act</td>
<td>European Union (Withdrawal) Act 2018</td>
</tr>
<tr>
<td>EuZW</td>
<td>Europäische Zeitschrift für Wirtschaftsrecht</td>
</tr>
<tr>
<td>FamRZ</td>
<td>Zeitschrift für das gesamte Familienrecht</td>
</tr>
<tr>
<td>GG</td>
<td>Grundgesetz (German Basic Law)</td>
</tr>
<tr>
<td>GRUR</td>
<td>Gewerblicher Rechtsschutz und Urheberrecht</td>
</tr>
<tr>
<td>HC</td>
<td>House of Commons</td>
</tr>
<tr>
<td>HL</td>
<td>House of Lords</td>
</tr>
<tr>
<td>HRA</td>
<td>Human Rights Act 1998</td>
</tr>
<tr>
<td>ICLQ</td>
<td>International and Comparative Law Quarterly</td>
</tr>
<tr>
<td>I-CON</td>
<td>International Journal of Constitutional Law</td>
</tr>
<tr>
<td>IRLR</td>
<td>Industrial Relations Law Reports</td>
</tr>
<tr>
<td>JBl</td>
<td>Juristische Blätter</td>
</tr>
<tr>
<td>JR</td>
<td>Judicial Review</td>
</tr>
<tr>
<td>JuS</td>
<td>Juristische Schulung</td>
</tr>
<tr>
<td>JZ</td>
<td>JuristenZeitung</td>
</tr>
<tr>
<td>KG</td>
<td>Kammergericht (Berlin Appellate Court)</td>
</tr>
<tr>
<td>LG</td>
<td>Landgericht (German Regional Court)</td>
</tr>
<tr>
<td>LJ</td>
<td>Lady Justice of Appeal or Lord Justice of Appeal</td>
</tr>
<tr>
<td>LQR</td>
<td>Law Quarterly Review</td>
</tr>
<tr>
<td>MJ</td>
<td>Maastricht Journal of European and Comparative Law</td>
</tr>
<tr>
<td>MLR</td>
<td>Modern Law Review</td>
</tr>
<tr>
<td>MR</td>
<td>Master of the Rolls</td>
</tr>
<tr>
<td>n.</td>
<td>note</td>
</tr>
<tr>
<td>NJW</td>
<td>Neue Juristische Wochenschrift</td>
</tr>
<tr>
<td>NVwZ</td>
<td>Neue Zeitschrift für Verwaltungsrecht</td>
</tr>
<tr>
<td>NVwZ-RR</td>
<td>Neue Zeitschrift für Verwaltungsrecht, Rechtsprechungs-Report</td>
</tr>
<tr>
<td>NZA</td>
<td>Neue Zeitschrift für Arbeitsrecht</td>
</tr>
<tr>
<td>NZA-RR</td>
<td>Neue Zeitschrift für Arbeitsrecht, Rechtsprechungs-Report</td>
</tr>
<tr>
<td>NZS</td>
<td>Neue Zeitschrift für Sozialrecht</td>
</tr>
<tr>
<td>OJLS</td>
<td>Oxford Journal of Legal Studies</td>
</tr>
<tr>
<td>OLG</td>
<td>Oberlandesgericht (German Higher Regional Court)</td>
</tr>
<tr>
<td>OUP</td>
<td>Oxford University Press</td>
</tr>
<tr>
<td>QB</td>
<td>Queen's Bench Division of the High Court</td>
</tr>
<tr>
<td>PC</td>
<td>Privy Council of the United Kingdom</td>
</tr>
<tr>
<td>PL</td>
<td>Public Law</td>
</tr>
<tr>
<td>RabelsZ</td>
<td>Rabels Zeitschrift für ausländisches und internationales Privatrecht</td>
</tr>
<tr>
<td>RdA</td>
<td>Recht der Arbeit</td>
</tr>
<tr>
<td>RIW</td>
<td>Recht der internationalen Wirtschaft</td>
</tr>
<tr>
<td>s.</td>
<td>section</td>
</tr>
<tr>
<td>Sch.</td>
<td>Schedule</td>
</tr>
<tr>
<td>ss.</td>
<td>sections</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>SSRN</td>
<td>Social Science Research Network</td>
</tr>
<tr>
<td>StGB</td>
<td>Strafgesetzbuch (German Criminal Code)</td>
</tr>
<tr>
<td>TEU</td>
<td>Treaty on European Union</td>
</tr>
<tr>
<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
</tr>
<tr>
<td>UKSC</td>
<td>Supreme Court of the United Kingdom</td>
</tr>
<tr>
<td>Vol.</td>
<td>Volume</td>
</tr>
<tr>
<td>WLR</td>
<td>The Weekly Law Reports</td>
</tr>
<tr>
<td>WM</td>
<td>Wertpapier-Mitteilungen, Zeitschrift für Wirtschafts- und Bankrecht</td>
</tr>
<tr>
<td>ZaöRV</td>
<td>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</td>
</tr>
<tr>
<td>ZEuP</td>
<td>Zeitschrift für Europäisches Privatrecht</td>
</tr>
<tr>
<td>ZfPW</td>
<td>Zeitschrift für die gesamte Privatrechtswissenschaft</td>
</tr>
<tr>
<td>ZfRV</td>
<td>Zeitschrift für Europarecht, Internationales Privatrecht und Rechtsvergleichung</td>
</tr>
<tr>
<td>ZJS</td>
<td>Zeitschrift für das Juristische Studium</td>
</tr>
<tr>
<td>ZRP</td>
<td>Zeitschrift für Rechtspolitik</td>
</tr>
<tr>
<td>ZUM</td>
<td>Zeitschrift für Urheber- und Medienrecht</td>
</tr>
</tbody>
</table>