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Book Note

MULTI-PARTY LITIGATION: THE STRATEGIC CONTEXT, by Wayne V. McIntosh & Cynthia L. Cates¹

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THE AUTHORS OF *MULTI-PARTY LITIGATION* contend that “mass litigation stands as a trade-off between traditional notions of individual due process and more recent drives toward group rights. The emphasis on groups in turn impels litigation increasingly toward the political.”² Conflict itself, beyond the individual litigants, is what rises to the fore in the collective movements embodied by mass tort claims, multi-district litigation, and class actions. While this work certainly privileges the American experience, the authors’ findings about legal strategy and extra-judicial mechanisms for policy reform are relevant to multi-party litigation frameworks across the common law world.

Nearly a third of the text is devoted to detailing the lineage of collective litigation. The record begins in the medieval age, with a case of a parish rector seeking fees against a defendant class composed of his parishioners,³ and builds to contemporary examples of plaintiff classes demanding redress for the harms caused by pharmaceuticals, faulty products, and asbestos exposure.⁴ Central to the historical account is the role played by the ever-changing rules of civil procedure. Rule 23 of the US *Federal Rules of Civil Procedure* (in its many formulations between 1938 and present day) is credited as an important factor in setting the conditions and boundaries of the modern class action. The reciprocal relationship between politics and the judiciary’s interpretation of the rule is demonstrated by the courts’ varied positions on multiple issues over time, including the proper characteristics of a class representative and the necessary relationships—if any—between class members.

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1. (Vancouver: UBC Press, 2009) 280 pages [*Multi-Party Litigation*].
 2. *Ibid* at 3.
 3. *Ibid* at 17.
 4. *Ibid*, c 2.

Perhaps the most interesting historical development, however, is the use to which multi-party litigation has been put in different decades. With the rise of civil rights movements, class actions were the vehicle of choice for school desegregation and the advancement of women's rights.⁵ An unexpected change occurred, however, when the class action was employed to litigate mass torts.⁶ While the extension of civil rights and legislative reform was appropriate for many civil rights cases, unprecedented damage awards in tort law created new demands on the court system and raised new questions about justice—*e.g.*, if an award that would adequately compensate the victims in a tort action would nonetheless bankrupt the defendant company, should current plaintiffs reconsider their litigation strategy so as not to undermine the ability of future plaintiffs to seek redress? It is to the realm of mass torts that the authors direct their focus for the balance of the book.

One of *Multi-Party Litigation's* assets is its devotion of several chapters to specific hotspots for tort actions. An examination of the litany of class actions brought against big tobacco is undertaken in chapter three. Readers learn that the industry's massive dedication of resources has halted individuals, governments, and coalitions of plaintiff-side firms alike. Chapter four investigates the highly politicized attempts to hold the gun industry liable in tort. The gun lobby's strategic victories, such as the constitutional finding that the Second Amendment's right to bear arms is an individual right, created roadblocks for cities and states that attempted to limit gun ownership by legislative reform. Chapter five examines the politics of food litigation, including a discussion of "McLawsuits" that allege links between restaurant advertising and obesity. Detailed timelines at the end of each chapter provide the reader with a clear picture of the battles fought in and out of the courtroom.

Before concluding, McIntosh and Cates provide a brief comparative analysis of international developments in multi-party litigation to provide further insight into the US experience. Special attention is given to the United Kingdom, Australia, and Canada. The increasing persuasiveness of international standards and the relevance of international judicial opinions for the US courts' decision making are considered.

Multi-Party Litigation uses both historical and modern day case studies to reveal the role of politics in the changing nature of class action law and litigation. The work provides an accessible yet in-depth examination of collective action as a means for political change.

5. *Ibid* at 48. The authors mention *Brown v Board of Education of Topeka*, 347 US 483 (1954), and *Roe v Wade*, 410 US 113 (1973), as examples, among others.

6. *Supra* note 1 at 39.