

Contents

<i>Foreword by Lord Hope of Craighead KT</i>	vii
<i>Preface and Acknowledgments</i>	ix
<i>Table of Cases</i>	xvii
<i>Table of Legislation</i>	xxix
1: Introduction, Context and Methodology	1
Sources and Methodology.....	3
Judicial Notebooks	4
Elite Interviews	5
The Drawbacks of Oral History	6
Definitions.....	9
2: The Dialogue with Counsel	15
Introduction.....	15
The Context of the Dialogue Between Counsel and the Judges in the Final Court.....	16
Expectations which Constrain.....	20
Initiating the Dialogue.....	29
The Courtroom Dialogue.....	32
How has the Dialogue Between Counsel and The Court Changed?	39
Have the Qualities of Good Appellate Advocacy Changed?.....	42
Persuasive Advocacy	42
Robustness and Resilience	44
Courage.....	44
Timing.....	46
Written Advocacy	47
Does Advocacy Matter in the Final Court?	49
Case Studies in Effective Advocacy.....	53
Factors Which Make a Difference.....	55
Conclusion	63
3: Dialogues with Colleagues—The Stages for Discourse	66
Introduction.....	66
The Preparatory Stages.....	66
Laying the Groundwork.....	66
Involvement in Permission to Appeal Decisions.....	67

Being Chosen: The Selection of the Hearing Panel.....	70
Doing the Homework: Reading of the Preliminary Materials.....	73
The Oral Hearing.....	76
Judicial Dialogues in the Courtroom.....	76
Conclaves Off-stage: Dialogue Outside the Courtroom.....	81
The First Conference.....	83
Sharing of Preliminary Conclusions and Discussion.....	84
The Allocation of the Lead Judgment.....	91
Implications for the Future.....	94
The Drafting Stage.....	97
Order and Production of Circulation.....	97
Multiple Judgments and the Pursuit of Unity.....	99
Dissenting Opinions.....	110
Circulation Time.....	120
Conclusion.....	121
4: Dialogues with Colleagues—Efficacy in Judicial Dialogues.....	123
Introduction.....	123
Context.....	123
Stages.....	123
Time and Timing.....	127
The Composition of the Panel.....	130
Approaches to Collective Decision-Making:	
The Art of Persuasion.....	130
Engagement of Judgments.....	135
Team-working.....	141
Leadership in the House of Lords.....	146
Dissents, Individualism and Collegiality.....	152
Task Leadership and the US Supreme Court.....	154
Social Leadership.....	156
Leadership Skills in the Supreme Court.....	158
Social Leadership in the Supreme Court.....	165
Geography.....	167
Conclusion.....	169
5: Inter-Judicial Dialogues in Practice.....	170
Voting Relationships.....	170
Changes of Mind.....	176
The Bingham Era 2000–09.....	181
The UK Supreme Court 2009–13.....	195
Conclusion.....	207

6: Wider Dialogues Old and New	209
The Dialogue with the Court of Appeal.....	209
The Dialogue with Academics.....	213
Dialogues with Courts Overseas	221
The Dialogue with Strasbourg.....	222
Scots Appeals and London: A Fraught Relationship?.....	233
Deference	237
The Devolution Issues Jurisdiction	242
Conclusion.....	245
The Dialogue with Judicial Assistants	247
The Job of the Judicial Assistant.....	248
7: The Dialogue with Other Branches of Government.....	258
Setting the Scene	258
The Dialogue with Parliament.....	258
Judicial Activism and its Drawbacks	259
Hard Cases Make Bad Law.....	262
Justice, Certainty and Fairness.....	263
Drawing the Line.....	268
Who Really Draws the Line?	273
Where Should the Lines be Drawn?	275
Arguments from Parliamentary Activity and Inactivity	276
Lines of Communication	282
Conclusion.....	285
The Dialogue with the Executive	286
Intra-governmental Relations.....	287
Attempts by the Executive to Engage with the Court	301
Accountability.....	304
The Challenge of Accountability	306
8: Final Reflections	312
<i>Index</i>	<i>323</i>