



EVIDENTIAL UNCERTAINTY IN CAUSATION IN NEGLIGENCE

Gemma Turton

Series: Hart Studies in Private Law

May 2016

264pp Hbk 9781849467049 RSP: £55

20% Discount Price: £44 (+ postage)

eBook version also available

This book undertakes an analysis of academic and judicial responses to the problem of evidential uncertainty in causation in negligence. It seeks to bring clarity to what has become a notoriously complex area by adopting a clear approach to the function of the doctrine of causation within a corrective justice-based account of negligence liability. It first explores basic causal models and issues of proof, including the role of statistical and epidemiological evidence, in order to isolate the problem of evidential uncertainty more precisely. Application of Richard Wright's NESS test to a range of English case law shows it to be more comprehensive than the 'but for' test that currently dominates, thereby reducing the need to resort to additional tests, such as the *Wardlaw* test of material contribution to harm, the scope and meaning of which are uncertain. The book builds on this foundation to explore the solution to a range of problems of evidential uncertainty, focusing on the *Fairchild* principle and the idea of risk as damage, as well as the notion of loss of a chance in medical negligence which is often seen as analogous with 'increase in risk', in an attempt to bring coherence to this area of the law.

THE AUTHOR

Gemma Turton is a Lecturer in Law at the University of Leicester.

CONTENTS

Introduction

1. Theoretical and Doctrinal Framework

- I. The Theoretical Basis of Negligence
- II. The Doctrinal Framework
- III. Conclusion

2. Identifying the Proper Function of Causation

Part I: Identifying the Function of Causation in Negligence

- I. The Demands on Causation
- II. Causation in the Philosophy of Hume and Mill

Part II: Tests for Causation

- I. Complexity and Plurality of Causes as Necessary and Sufficient Conditions
- II. Overcoming Potential Problems with NESS

Part III: Using NESS to Overcome Common Problems with Exceptional Legal Tests

- I. The Current State of the *Wardlaw* Test
- II. Defining Damage: Divisibility of Damage or Divisibility of Trigger?
- III. Using NESS to Clarify the Material Contribution to Harm Test
- IV. Conclusion

3. Proof of Causation

- I. Standards of Proof in Science and Law
- II. Epidemiological Evidence
- III. Using (and Misusing) Epidemiological Evidence in Negligence
- IV. Conclusion

4. Loss of a Chance

Part I: Loss of a Chance: Proportionate Recovery for Physical Harm

- I. Orthodox Negligence Principles in *Hotson* and *Gregg*
- II. Loss of a Chance and the Balance of Probabilities Standard of Proof

Part II: The 'Lost Opportunity' as Damage

- I. The Patient's Autonomy Interest
- II. Orthodox Application of the Remaining Negligence Doctrines

5. The Evidentiary Gap

- I. Defining the Evidentiary Gap
- II. Evidential Solutions: The Inferential Approach
- III. Risk of Harm as the Gist of the Negligence Action: *Barker v Corus (UK) plc*
- IV. Theoretical Approaches to the 'Evidentiary Gap'
- V. Conclusion

Conclusion

**20% discount
with this flyer!**

**TO PLACE
AN ORDER**

go to
www.hartpub.co.uk

To receive your 20% discount you will need to type CV7 in the voucher code field and click 'apply'

UK ORDERS

+44 (0)1256 302692
direct@macmillan.co.uk

EU / ROW ORDERS

+44 (0)1256 329242
export@macmillan.co.uk

FOLLOW US ON TWITTER!

For news about
Hart Publishing
[@HartPublishing](https://twitter.com/HartPublishing)

**KEEP UP TO DATE WITH
HART PUBLICATIONS
AND RECEIVE 10%
DISCOUNT BY JOINING
OUR EMAIL MAILING
LIST!**

Visit www.hartpub.co.uk
for details

**HART
PUBLISHING**

*Good Books
for Lawyers*



• HART •

- www.hartpub.co.uk -