NEGLIGENCE – CAUSATION AND REMOTENESS

POLICY

For the role played by policy in the issue of causation, see the speech of Lord Denning in:

Lamb v Camden LBC [1981] 2 All ER 408

Policy also played a part in the decisions in *Meah v McCreamer (No 2)* [1986] 1 All ER 943, and *Clunis v Camden HA* [1998] 3 All ER 180 (see below).

CAUSATION IN FACT

BUT FOR TEST

The claimant must prove that harm would not have occurred 'but for' the negligence of the defendant. This test is best illustrated by:

Barnett v Chelsea & Kensington Hospital [1968] 1 All ER 1068
Robinson v Post Office [1974] 2 All ER 737

It is possible to apply the 'but for' test where there is speculation as to how the claimant would have behaved in a given situation. Contrast the two following cases:

Cummings (or McWilliams) v Sir William Arrol & Co [1962] 1 All ER 623
Bux v Slough Metals Ltd [1974] 1 All ER 262

The question of causation may also arise where there is a dispute about what the defendant would have done in a given situation, as in:

Bolitho v City & Hackney HA [1997] 4 All ER 771

Sometimes, it may be clear that the defendant's breach of a duty did not actually cause the harm suffered by the claimant. See:

The Empire Jamaica [1955] 1 All ER 452

PROOF OF CAUSATION

The claimant must prove, on the balance of probabilities, that the defendant's breach of duty caused the harm. The defendant does not have to provide an explanation for the cause of harm but a failure to do so may be a factor in deciding whether the claimant's explanation of the cause should be accepted. See:

Pickford v Imperial Chemical Industries [1998] 3 All ER 462

MULTIPLE CAUSES

However, the claimant does not have to prove that the defendant's breach of duty was the main cause of the damage provided that it materially contributed to the damage. See:

Bonnington Castings Ltd v Wardlaw [1956] 1 All ER 615

It may be sufficient for the claimant to show that the defendant's breach of duty made the risk of injury more probable. See:

McGhee v National Coal Board [1972] 3 All ER 1008

Where there are a number of possible causes, the claimant must still prove the defendant's breach of duty caused the harm or was a material contribution. See:

Wilsher v Essex AHA [1988] 1 All ER 871

Where the claimant's case is based on proving a material contribution to the damage, the defendant is responsible only for that part of the damage to which his negligence has contributed. See:

Holtby v Brigham & Cowan Ltd [2000] 3 All ER 421

The case of *McGhee* has also been applied to a case where there were three possible causes of injury:

Fitzgerald v Lane and another [1987] 2 All ER 455

LOSS OF CHANCE

A claimant may lose because of a solicitor's negligence an opportunity to bring legal proceedings, or because of a doctor's negligence a good chance of recovery. Loss of chance is actionable in contract (*Chaplin v Hicks* [1911] 2 KB 786) but its extent in tort is unclear. It was actionable in:

Kitchen v RAF Association and others [1958] 2 All ER 241

The House of Lords have held that questions of loss of chance do not arise where there are positive findings of fact on the issue of causation. Such a case may be an 'all or nothing' case. See:

Hotson v East Berkshire AHA [1987] 2 All ER 909

Where the claimant's loss resulting from the defendant's negligence depended on the hypothetical action of a third party, either in addition to action by the claimant or independently of it, see the decision of the Court of Appeal in:

Allied Maples Group v Simmons & Simmons [1995] 4 All ER 907

The Court of Appeal has followed the approach adopted in *Allied Maples* in two later cases: *First Interstate Bank v Cohen Arnold & Co* [1996] 1 PNLR 17, and *Stovold v Barlows* [1996] 1 PNLR 91

INADEQUACY OF THE BUT FOR TEST

The but-for test will be inadequate in a number of cases, for example, where the breach of duty consists of an omission to act, where the claimant's damage is the result of more than one cause and where the claimant's loss is economic.

CAUSATION IN LAW

NOTE

causa causans = immediate or effective cause
causa sine qua none = ineffective cause
nova causa interveniens = new intervening cause
novus actus interveniens = new act intervening

MULTIPLE CAUSES

CONCURRENT CAUSES

See p2 for *Wilsher v Essex AHA* [1988] 1 All ER 871.

SUCCESSIVE CAUSES

Where there are two successive causes of harm, the court may regard the first event as the cause of the harm. See:

Performance Cars v Abraham [1961] 3 All ER 413

However, it is possible for a second supervening event to reduce the effect of a tort. See:

Carslogie Steamship Co v Royal Norwegian Government [1952] 1 All ER 20

Where a tort is submerged in a greater injury caused by (a) another tort or (b) a supervening illness or non-tortious event see:

Baker v Willoughby [1968] 2 All ER 236
Jobling v Associated Dairies [1981] 2 All ER 752
Heil v Rankin and another [2000] 3 All ER 138

NOVUS ACTUS INTERVENIENS

NATURAL EVENTS

See above for:

Carslogie Steamship Co v Royal Norwegian Government [1952] 1 All ER 20

If the claimant's act is a natural consequence of the position in which he was placed as a direct consequence of the defendants' negligence it will not break the chain of causation. See:

The Oropesa [1943] 1 All ER 211

ACTS OF THIRD PARTIES

The defendant may be responsible for harm caused by a third party as a direct result of his negligence, provided it was a highly likely consequence. See:

Stansbie v Troman [1948] 1 All ER 599
Home Office v Dorset Yacht Co [1970] 2 All ER 294
Lamb v Camden LBC [1981] 2 All ER 408
Ward v Cannock Chase DC [1985] 3 All ER 537
Smith v Littlewoods [1987] 1 All ER 710

ACTS OF THE CLAIMANT

If the claimant suffers further injury as a result of his own actions, there will be a break in the chain of causation only if the claimant acted unreasonably. Contrast:

Wieland v Cyril Lord Carpets [1969] 3 All ER 1006
McKew v Holland, Hannen & Cubitts & Co [1969] 3 All ER 1621

A defendant may be responsible where the claimant commits suicide following the defendants' negligence. However, damages will now be apportioned under the Law Reform (Contributory Negligence) Act 1943. See:

Pigney v Pointer [1957] 2 All ER 807
Reeves v MPC [1999] 3 All ER 897

Public policy will prevent a claimant relying on his own criminal acts from seeking compensation from the defendant. See:

Meah v McCreamer (No. 2) [1986] 3 All ER 897
Clunis v Camden HA [1998] 3 All ER 180

REMOTENESS OF DAMAGE

THE CONTRASTING APPROACH OF THE APPELLATE COURTS

The opinion of the Court of Appeal was that a defendant was liable for all the direct consequences of his negligence, no matter how unusual or unexpected:

Re Polemis [1921] 3 KB 560

The opinion of the Privy Council was that a person is responsible only for consequences that could reasonably have been anticipated:

The Wagon Mound [1961] 1 All ER 404
The Wagon Mound (No. 2) [1966] 2 All ER 709

MANNER OF OCCURRENCE

If harm is foreseeable but occurs in an unforeseeable way there may still be liability. See:

Hughes v Lord Advocate [1963] 1 All ER 705

However, there are two cases which go against this decision:

Doughty v Turner Manufacturing [1964] 1 All ER 98
Crossley v Rawlinson [1981] 3 All ER 674

A recent case is:

Jolley v Sutton LBC [2000] 3 All ER 409

TYPE OF HARM

The damage must be of the same type or kind as the harm that could have been foreseen. Contrast:

Bradford v Robinson [1967] 1 All ER 267
Tremain v Pike [1969] 3 All ER 1303

Note that only personal injury of some kind needs to be reasonably foreseeable where a primary victim suffers psychiatric harm, according to the House of Lords in *Page v Smith* [1995] 2 All ER 736.

EXTENT OF HARM

The defendant will still be liable, provided the type of harm and its manner was reasonably foreseeable, if the extent of the harm was not foreseeable:

Vacwell Engineering v BDH Chemicals [1970] 3 All ER 553 and [1969] 3 All ER 1681 (for facts)

EGGSHELL SKULLS

It is well-established that 'the tortfeasor must take his victim as he finds him'. The defendant will be responsible for the harm caused to a claimant with a weakness or predisposition to a particular injury or illness. See:

Smith v Leech Brain [1961] 3 All ER 1159
Robinson v Post Office [1974] 2 All ER 737

CLAIMANT'S IMPECUNIOSITY

The claimant's impecuniosity (lack of funds) is no excuse for a failure to mitigate damages. See the decision of the House of Lords in:

Liesbosch Dredger v SS Edison [1933] AC 449

However, this authority has been distinguished by the Court of Appeal, QBD and the Privy Council:

Martindale v Duncan [1973] 2 All ER 355
Dodd Properties v Canterbury CC [1980] 1 All ER 928
Perry v Sidney Phillips [1982] 3 All ER 705
Jarvis v Richards (1980) 124 SJ 793
Alcoa Minerals v Broderick [2000] 3 WLR 23