

Causation: An Overview

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“But for” causation

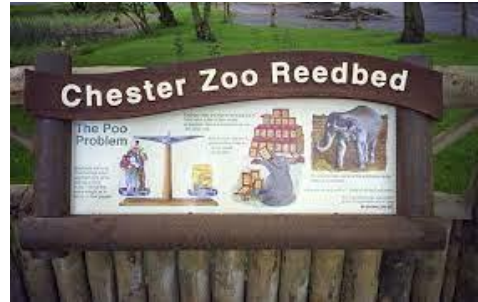
- Is it more likely than not that, but for the defendant’s breach, the damage would not have occurred?
- *Barnett v Chelsea and Kensington Hospital Management Committee* [1969] 1 QB 428
- The strange case of the exploding lamp





Chester v Afshar

- *Chester v Afshar* [2004] UKHL 41: a “modest departure” from the normal causation rules.
- Strictly limited by the courts
- *Correia v University Hospital of North Staffordshire NHS Trust* [2017] EWCA Civ 356
- *Duce v Worcestershire Acute Hospitals NHS Trust* [2018] EWCA Civ 1307



Crossman v St George's

- *Crossman v St George's Healthcare NHS Trust* [2016] EWHC 2878 (QB)
- “But for” causation in a *Chester* type case?
- Not followed in subsequent cases (*Barry* [2019] Med L.R. 191 and *Pomphrey* [2019] Med L.R. 424)





Loss of a chance

- Claimants cannot recover damages for the loss of a less than even chance of avoiding the injury
- *Hotson v East Berkshire Health Authority* [1987] AC 750
- *Gregg v Scott* [2005] 2 AC 176
- *Hague v Dalzell and Fish* [2016] EWHC 2753
- *Schembri v Marshall* [2020] EWCA Civ 358



Material Contribution

- What is meant by “material contribution”?
- *Bonnington Castings Ltd v Wardlaw* [1956] AC 613
- *Bailey v MOD* [2008] EWCA Civ 883
- *Williams v Bermuda Hospital* [2016] UKPC 4
- *Davies v Frimley Health NHS Foundation Trust* [2021] EWHC 169 (QB)



Material Contribution “to risk”?

- In the clinical negligence context, it will not be sufficient to show a material contribution to the risk of damage, rather than to the damage itself
- *McGhee v National Coal Board* [1973] 1 WLR 1
- *Wilsher v Essex Area Health Authority* [1988] 1 AC 1074
- *Fairchild v Glenhaven Funeral Services Ltd* [2003] UKHL 22



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