Contents

Contributors page xiii
General Editors’ Preface xv
Preface xvii
National Reporters xix
Table of Legislation xxi
Basic Provisions xxvii
Abbreviations li

Part I Causation in Context

1 The Place and Space of Causation 3
MARTA INFANTINO AND ELENI ZERVOGIANI

1.1 Introduction 3
1.2 Causation, Cognition, Culture 5
1.3 Causation across Legal Domains 8
1.4 The Law-Makers of Causation Rules 11
1.5 The Road Map 15

2 Causation in the Law: Philosophy, Doctrine and Practice 17
INGLEBORG PUPPE AND RICHARD W. WRIGHT

2.1 Distinguishing Causation and Responsibility 17
2.2 Causation: Philosophical Foundations 20
2.2(a) Overview 20
2.2(b) David Hume’s Regularity Theory 21
2.2(c) Arthur Schopenhauer’s Law of Causality 22
2.2(d) John Stuart Mill’s Laws of Nature (Covering Law) Theory 22
2.2(e) John Mackie’s INUS/Strong Necessity Analysis 25
2.2(f) Objections to Generalist Theories 26
2.2(g) David Lewis’s Counterfactual Theory 29
2.2(h) Singularist Theories and Negative Conditions as Causes 31
2.3 Causation in the Law 34
2.3(a) Strong Necessity (Sine Qua Non/But For) 34
2.3(b) Weak Necessity/Strong Sufficiency 42
2.4 Overdetermined Negative Causation 51
2.5 Proving Causation 54
2.6 Conclusion 58

3 Actual Causation in the Second and Third Restatements: Or, the Expulsion of the Substantial Factor Test 60
  Anthony J. Sebok
  3.1 Introduction 60
  3.2 Substantial Factor Revisited: Restatement (Second) §§ 431 and 432 63
    3.2(a) The Multiple Sufficient Contribution 64
    3.2(b) The Trivial Necessary Contribution 66
  3.3 R3’s Rejection of Substantial Factor 68
  3.4 Conclusion 83

4 The European Ways to Causation 85
  Marta Infantino and Eleni Zervogianni
  4.1 A Variety of Approaches 85
  4.2 Overarching, Bounded, Pragmatic Causation 87
  4.3 Overarching Causation: France, Italy, Spain, Poland, Bulgaria 89
    4.3(a) France 89
    4.3(b) Italy 93
    4.3(c) Spain 96
    4.3(d) Poland 97
    4.3(e) Bulgaria 100
  4.4 Bounded Causation: Germany, Czech Republic, Greece, Portugal, Denmark, Sweden 101
    4.4(a) Germany 101
    4.4(b) Czech Republic 105
CONTENTS ix

4.4(c) Greece 107
4.4(d) Portugal 110
4.4(e) Denmark 112
4.4(f) Sweden 114

4.5 Pragmatic Causation: Austria, the Netherlands, Lithuania, England, Ireland 117
4.5(a) Austria 117
4.5(b) The Netherlands 119
4.5(c) Lithuania 122
4.5(d) England 124
4.5(e) Ireland 126

Part II The Comparative Evidence: Case Responses and Editors’ Comparative Comments

5 Preliminary Remarks on the Methodology 131
MARTA INFANTINO AND ELENI ZERVOGIANNI

5.1 Aims and Method of the Study 131
5.2 The Common Core Approach to Tort Law 132
5.3 The Three-Level Responses 134
5.4 Causation and the Common Core Methodology: Some Caveats 136

6 The Case Studies 139
Case 1 Against Faith 139
Case 139
Discussions 139
Comparative Remarks 181

Case 2 Fire Knocks Twice 185
Case 185
Discussions 185
Comparative Remarks 215

Case 3 A Dangerous Photograph 218
Case 218
Discussions 218
Comparative Remarks 239

Case 4 Financial Judgments 242
Case 242
Discussions 242
Comparative Remarks 269
## Contents

<table>
<thead>
<tr>
<th>Case</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>A Cancerous Drug</td>
<td>272</td>
</tr>
<tr>
<td></td>
<td>Case</td>
<td>272</td>
</tr>
<tr>
<td></td>
<td>Discussions</td>
<td>272</td>
</tr>
<tr>
<td></td>
<td>Comparative Remarks</td>
<td>294</td>
</tr>
<tr>
<td>6</td>
<td>Hiking in the Storm</td>
<td>298</td>
</tr>
<tr>
<td></td>
<td>Case</td>
<td>298</td>
</tr>
<tr>
<td></td>
<td>Discussions</td>
<td>298</td>
</tr>
<tr>
<td></td>
<td>Comparative Remarks</td>
<td>319</td>
</tr>
<tr>
<td>7</td>
<td>Asbestos or Cigarettes?</td>
<td>322</td>
</tr>
<tr>
<td></td>
<td>Case</td>
<td>322</td>
</tr>
<tr>
<td></td>
<td>Discussions</td>
<td>322</td>
</tr>
<tr>
<td></td>
<td>Comparative Remarks</td>
<td>350</td>
</tr>
<tr>
<td>8</td>
<td>A Multi-Contaminated River</td>
<td>353</td>
</tr>
<tr>
<td></td>
<td>Case</td>
<td>353</td>
</tr>
<tr>
<td></td>
<td>Discussions</td>
<td>353</td>
</tr>
<tr>
<td></td>
<td>Comparative Remarks</td>
<td>376</td>
</tr>
<tr>
<td>9</td>
<td>An Epidemic in Town</td>
<td>380</td>
</tr>
<tr>
<td></td>
<td>Case</td>
<td>380</td>
</tr>
<tr>
<td></td>
<td>Discussions</td>
<td>380</td>
</tr>
<tr>
<td></td>
<td>Comparative Remarks</td>
<td>403</td>
</tr>
<tr>
<td>10</td>
<td>The Defective Trunk Lid</td>
<td>405</td>
</tr>
<tr>
<td></td>
<td>Case</td>
<td>405</td>
</tr>
<tr>
<td></td>
<td>Discussions</td>
<td>405</td>
</tr>
<tr>
<td></td>
<td>Comparative Remarks</td>
<td>421</td>
</tr>
<tr>
<td>11</td>
<td>Too Many Creditors</td>
<td>423</td>
</tr>
<tr>
<td></td>
<td>Case</td>
<td>423</td>
</tr>
<tr>
<td></td>
<td>Discussions</td>
<td>423</td>
</tr>
<tr>
<td></td>
<td>Comparative Remarks</td>
<td>440</td>
</tr>
<tr>
<td>12</td>
<td>Head Protection Lacking</td>
<td>442</td>
</tr>
<tr>
<td></td>
<td>Case</td>
<td>442</td>
</tr>
<tr>
<td></td>
<td>Discussions</td>
<td>442</td>
</tr>
<tr>
<td></td>
<td>Comparative Remarks</td>
<td>465</td>
</tr>
<tr>
<td>13</td>
<td>The Good Samaritan</td>
<td>467</td>
</tr>
<tr>
<td></td>
<td>Case</td>
<td>467</td>
</tr>
<tr>
<td></td>
<td>Discussions</td>
<td>467</td>
</tr>
<tr>
<td></td>
<td>Comparative Remarks</td>
<td>488</td>
</tr>
<tr>
<td>14</td>
<td>Fragile Victims I: A Stroke of Misfortune</td>
<td>492</td>
</tr>
<tr>
<td></td>
<td>Case</td>
<td>492</td>
</tr>
<tr>
<td></td>
<td>Discussions</td>
<td>492</td>
</tr>
<tr>
<td></td>
<td>Comparative Remarks</td>
<td>512</td>
</tr>
</tbody>
</table>
## Table of Contents

### Part III  The Comparative Assessment

7  Summary and Survey of the Results  587

MARTA INFANTINO AND ELENI ZERVOGIANNI

7.1  Outline of the Chapter  587

7.2  The Cartography of Causation  588

7.2(a)  Causation and Liability  588

7.2(b)  The Scope of Causation  590

7.2(c)  Causation across Stages  597

7.2(d)  Causation Theories at Trial  601

7.2(e)  Scrutinizing the Proof of Causation  609

7.3  Beyond Causation  617

7.3(a)  Remote Consequences  617

7.3(b)  Broken Chains  621

7.3(c)  Supervening Events under Review  628

7.4  Uncertainty and Probability  631

7.4(a)  The Jungle of Alternative Causation  631

7.4(b)  Loss of a Chance  644

7.5  Multiple Causes  646

7.5(a)  Causation among Multiple Tortfeasors  646

7.5(b)  The Victim under the Spotlight  654

7.6  The (Un)Common Core of Causation  660

Bibliography  667

Index  705