

Index

- adequate causal link, 37
- adequate causal theory
 - adequate causation, 39
 - in English law, 37
 - in German law, 39
- adequate causality
 - scope of the risk, 37
- adequate causation, 39
 - in French law, 41
- aims of competition law, 57
 - consumer welfare, 58
 - multiple objectives, 58
- Allied Maples Group Ltd v Simmons & Simmons*
 - [1995] EWCA Civ 17, 97
- all-or-nothing approach, 79, 108
- antitrust injury, 48
- apportionment of liability, 81
- Arkin v Borchard Lines Ltd* [2003] EWHC 687 (Comm), 117, 139
- balance of probability, 116, 122
- balance of probability rule
 - burden of proof and, 116
- Barker v Corus (UK) plc* [2006] UKHL 20, 37
- BGH, 6.7.1993 VI ZR 228/92, 156
- BGH, 12.7.2016, KZR 25/14, 156
- BGH, 17 February 1970 ('Anastasia Decision'), 125
- BGH, 28.6.2005, KRB 2/05, NJW 2006, 155
- BGH, 28/6/2011, KZR 75/10, 100
- Broadcom Corp. v Qualcomm Inc* 501 F.3d 297 (3d Cir. 2007), 46
- Brunswick Corp. v Pueblo Bowl-O-Mat, Inc.* 429 U.S. 477 (1977), 48
- burden of proof, 109
 - allocation, 146
- burden of persuasion, 109
- causal uncertainty, 142
- departures, types of, 142
- English law, 122
- German law, 124
- in EU law, 112
- in French law, 127
- in Italian law, 129
- informational asymmetry, 143
- moral justification, 160
- probatio diabolica, 82
- relaxation rules, 142
- risk allocation, 109
- burden of proof, 83
- cartel. *See* anticompetitive agreements
- Case C-6/74 *Société Roquette Frères v Commission of the European Communities* [1976] ECR 677, 52
- Case C-8/08 *T-Mobile v Raad van bestuur van de Nederlandse Mededingingsautoriteit* [2009] ECR I-4529, 119, 147
- Case C-12/03 P, *Commission v Tetra Laval* [2005] ECR I-987, 138
- Case C-42/84, *Remia* [1985] ECR 2545, 39
- Case C-49/92 P *Commission v Anic Partecipazioni* [1999], 147
- Case C-56/65 [1966] ECR 235, 135
- Case C-62/86 *AKZO Chemie BV v Commission* ECLI:EU:C:1991, 286, 147
- Case C-73/95 P. *Viho Europe BV v Commission of the European Communities* [1996] ECR I-5457, 87
- Case C-74/14 *Eturas and Others* ECLI:EU:C:2016:42, 144
- Case C-97/08 P *Akzo Nobel NV OJ C 128*, 86
- Case C-199/92 P *Hüls v Commission* [1999], 147

- Case C-453/99 *Courage Ltd v Bernard Crehan and Bernard Crehan v Courage Ltd and Others* [2001] ECR I-06297, 1, 97, 166
- Case C-557/12 *Kone AG and Others v ÖBB-Infrastruktur AG*, 137
- Case T-11/89 *Shell International Chemical Company v Commission* [1992] ECR II-757, 86
- Case T-201/04 *Microsoft Corp. v Commission* [2007] ECR II-3601, 137
- Case T-216/13 *Telefónica v Commission* ECLI:EU:T:2016:369, 112
- CAT *JJB Sports Plc v Office of Fair Trading*, 123
- causal contribution, 82, 85
- causal inference, 143
 - abductive inference, 143
 - deductive inference, 143
 - inductive inference, 143
 - prima facie evidence, 144
 - presumption, 145
 - proof proximity, 159
- causal presumption
 - control, presumption of, 89
- causal probability
 - semantics, 75
- causal proportional liability, 77, 89
- causal proportional theories. *See* causal proportional liability
- causal redundancy, 104
- causal regularity, 44
 - direct causal link, 43
 - in English Law, 34
 - in French law, 40
 - in German law, 38
 - in Italian law, 43
 - quantitative or scalar, 23
 - risk theory, 24
 - risk, scope of, 37
- causal uncertainty, 2, 4, 7–8, 10–11, 13, 16, 19, 43, 69–74, 77–79, 114–115, 117, 121, 142, 153, 161, 165, 192
- counterfactual proof, 73
 - definition, 69
 - economic harm, 71
 - factual uncertainty, 72
 - general, 72
 - in English law, 84
 - in French law, 83
 - in German law, 85
 - in Italian law, 85
 - indeterminate defendants, 79
 - indeterminism, 73
 - overdetermined causation, 81
 - probabilistic causation, 74
 - scientific uncertainty, 72
 - sources, 70
 - specific, 72
 - underdetermined causation, 82
- causation
 - all-or-nothing approach, 108
 - and cumulative effects of contracts, 82
 - decisive influence, 89
 - empirical method, 8
 - function of, 5
 - in economic analysis of law, 11
 - in EU law, 66
 - in US antitrust law, 45
 - regularity theories, 9
- causation, proof of, 106
 - discretionary power, 119
 - statistical probability, 120
 - standards of proof, 120
 - economic evidence, 120
 - in English law, 122
 - in German law, 124
 - in French law, 127
 - in Italian law, 128
 - informational asymmetries, 141
- causation, proof of evaluation, 119
- causation in fact
 - material causation, 19, 25
- causation test
 - adequate causal theory, 37
 - but-for test, 35
 - NESS, 21
- cause in fact
 - but-for test, 35
- claimants indeterminacy, 103
- collective redress, 103
- common sense, 31
- comparator-based model, 138
- compensatory principle, 1, 14, 59, 80
- competition law infringement
 - exclusionary offense, 18
 - exploitative offense, 17
- competition law liability
 - causal contribution, 82
 - comparative fault, 90
 - contributory negligence, 89
 - joint and several liability, 80
- competition law liability
 - apportionment of liability, 89
- competition law objectives
 - Damages Directive aims, 59
 - liability, 57
- concerted practice, 111
- conditio sine qua non*. *See* but-for test
- consequential damages, 166
- convergence of national rules, 64

- Cooper Tire & Rubber Co & Ors v Shell Chemicals UK Ltd & Ors* [2009] EWHC 2609 (Comm), 87
- Cooper Tire & Rubber Company Europe Limited v Dow Deutschland Inc* [2010] EWCA Civ 864, 179
- corrective justice, 1, 3, 5, 14, 26, 59, 74, 80, 88, 141, 152
- first-order duties, 6
- second-order duties, 6
- Corte d'Appello Cagliari 23.1. 1999, *Unimare S.r.l v Geasar S.p.a.*, 177
- Corte d'Appello Turin 6.7.2000, *Indaba Incentive Co v Juventus FC S.p.A.*, 188
- Corte di Cassazione civ., *Telecom v Sign and Others*, 16 May 2007, n 11312, 103
- Corte di Cassazione *Sara Assicurazioni v G.V.*, 30 May 2013, n 13667, 140
- Corte di Cassazione sez. III, 4 marzo 2004, n 4400, 92
- Corte di Cassazione, *Allianz v Tagliaferro*, 26 May 2011, n 11610, in Giust. civ. Mass. 2011, 5, 808 (2011), 140
- Corte di Cassazione, *Blasi v Az. cons. trasp. pubbl. Napoli*, 22 April 1993, no 4725, 102
- Corte di Cassazione, *Fonsai v Nigriello*, 2 February 2007, n 2305, 130
- Corte di Cassazione, *Montani et al v Lloyd Adriatico*, 25 September 1998, no 9598, 101
- Costner v Blount National Bank* n 52 578 F.2d 1192 (6th Cir. 1978), 47
- counterfactual, 20, 73, 132, 134–135
- counterfactual buyer, 26
- Cour d'Appel Paris, *SNC Doux Aliments Bretagne etc v SAS Ajinomoto Eurolysine*, 27 February 2014 No 0710478, 176
- Cour de Cassation civile, 1re, 12 November 1985, Bull. civ I, no. 298, 94
- Cour de Cassation, comm., 15.6.2010, 09/15816, 176
- Cour de Cassation, commercial division, *Ajinomoto Eurolysine v SNC Doux Aliment Bretagne and Others* No 09/15816 (15 June 2010), 95
- Cour de Cassation, *Doux Aliments v Ajinomoto Eurolysine* 09-15816., 175
- Cour de Cassation, *JCB Services et al. v Central Parks*, 6 October 2015, no. 13-24.854, 83
- Cour de Cassation, *Le Gouessant*, 15 May 2012, 11-18495, 176
- Cour de Cassation, *Orange v Cowes*, 25 March 2014, No 1313839, 95
- Court of Appeal of Paris, *M. Merhi Bassam v SNC Société Presse Paris Services – SPPS*, No 08/21750, 27 April 2011, 96
- Court of Appeal of Versailles, *SA Concurrence v SA Aïwa France*, No 01/08413, 9 December 2003, 96
- Court of Cassation, *Fonsai v Nigriello*, 2 February 2007, n 2305, 146
- Crehan v Innpreneur Pub Company CPC* [2004] EWCA Civ 637, 34, 97
- cumulative foreclosure effect, 90
- damages action
- harmonization process, 66
- damages actions
- in English law, 34
- in French law, 40
- in German law, 38
- in Italian law, 43
- liability standards, 54
- scope of, 61
- statutory duty in English law, 35
- deterrence, 15
- Devenish Nutrition Ltd v Sanofi-Aventis SA* [2008] EWCA Civ 1086, 178
- direct causal link
- in EU law, 52
- proximity principle, 52
- direct purchaser, 167
- Directive on damages actions 104/2014, 50
- documentary evidence, 106
- duplicative causes, 104
- duty of consistent interpretation, 5
- economic evidence, 131
- admissibility, 131
- econometrics, 132
- probative value, 145
- effectiveness, 2, 49, 53, 55–56, 58–60, 62–63, 65–67, 81–82, 97, 113, 118, 144, 148, 150, 156–157, 189
- effectiveness, principle of, 50
- Emerald Supplies Ltd & Anor v British Airways Plc* [2010] EWCA Civ 1284, 178
- Emerson Electric Co & Ors v Mersen UK Portslade Ltd & Anor* [2012] EWCA Civ 155, 88
- Enron Coal Services Limited v English Welsh & Scottish Railway* [2011] EWCA Civ 2, 98
- Enron Coal Services Limited v English Welsh & Scottish Railway Limited* [2009] CAT 36, 139
- equivalence, 2, 29, 53, 55–56, 59, 64–65, 68, 82, 118
- equivalence, principle of, 50
- evidence, 106
- circumstantial evidence, 146
- evaluation, 162
- value of the proof, 161

- evidence, disclosure of, 113
 evidence, law of, 107
 evidential burden, 109, 115
 scientific expert, 131
 exceptional proof rules
 English law, 152
 French law, 158
 German law, 155
 Italian law, 158
 exclusionary conduct, 165
 exclusionary practice, 16
 expert witness, 131
 exploitative abuse, 16, 165
 exploitative conducts, 8
- factual causation
 in English law, 35
 in French law, 41
 in German law, 38
 in Italian law, 44
 in US law, 46
Fairchild v Glenhaven Funeral Services Ltd [2002]
 UKHL 22, 37
 fairness, 141
 false acquittals, 116
 false condemnations, 116
 foreseeability, 115
 foreseeability test
 reasonableness, 36
 French commercial court, 30 March 2011, SA
 Numericable et a. v. SA France Telecom
 Orange, 128
*Fulton Shipping Inc of Panama v Globalia
 Business Travel SAU (formerly Travelplan
 SAU) of Spain* (2014) EWHC 1547 (Comm),
 179
- Gatt Communications, Inc. v PMC Associates,
 L.L.C.* 711 F.3d 68, 76 (2d Cir. 2013), 48
 general causation, 6, 72, 147
- Hanover Shoe, Inc v United Shoe Machinery Corp*
 392 US 481 (1968), 180
Healthcare at Home v Genzyme Ltd [2006] CAT
 29, 139
 Higher Regional Court of Düsseldorf, 9 April 2014,
 VI-U (Kart) 10/12, 100
- I Illinois Brick Co v Illinois* 431 US 720 (1977),
 180
 indirect purchasers' claims, 167
*In re Methyl Tertiary Butyl Ether (MTBE) Products
 Liability Litigation* (2010) 739 F. Supp. 2d 576
 (SDNY) 596, 46
- indirect economic losses, 164
 indirect harm, 44
 counterfactual buyer or customer, 17
 waterbed effect, 185
 indirect loss, 116
 inference, 112
 abductive reasoning, 144
 indirect evidence, 144
 information asymmetry, 113
 inspections, 106
 Italian Court of Cassation civ. Sez. Un.,
 4 February 2005, n 220, 14
 Italian Court of Cassation, Comi/Cargest,
 judgment no 11564 of 4 June 2015, 130
 Italian Court of Cassation, Division III, no 7026,
 2001, 129
 Italian Court of Cassation SU, 11 January 2008,
 no 581, 129
- Joined Cases C-6/90 and C-9/90, *Andrea
 Francovich and Danila Bonifaci and others v
 Italian Republic* [1991] ECR 5357, 52
 Joined Cases C-295/04 to C-298/04 *Vincenzo
 Manfredi v Lloyd Adriatico Assicurazioni SpA*
 (2006) ECR I-06619, 1, 50, 165
 joint and several liability, 80
 in English law, 84
 in French law, 83
 in German law, 85
 in Italian law, 85
- KG 01.10.2009, 2 U 10/03 Kart NZG 2010,
 420, 173
 KG 01.10.2009, 2 U 17/03 openJur 2012,
 11758, 173
Kone AG and Others v ÖBB-Infrastruktur AG, 188
- legal causation
 and common sense, 28
 and corrective justice, 26
 and fairness concerns, 28
 and foreseeability, 27
 and legal policy objectives, 28
 foreseeability of the harm, 29
 generalizing theories, 27
 in French law, 41
 in Italian law, 44
 remoteness, 36
 remoteness in English law, 36
 legal policy theory. *See* scope of the rule
 LG Dortmund 01.04.2004, 13 O 55/02 Kart WuW/
 E DE-R, 1352, 173
 LG Mainz, 15.01.2004, 12 HK.O 52/02 Kart
 NJW-RR 2004, 478, 172

- LG Mannheim 11.7.2003 7 O 326/02 GRUR 2004, 182, 172
 LG Mannheim 29.04.2005, 22 O 74/04 Kart EWIR 659, 173
 loss of chance, 91
 in English law, 97
 in French law, 94
 in general, 91
 in German law, 100
 in Italian law, 101
 lost chances. *See* loss of chance
 lost opportunities, 16
 lost-volume effect, 16
- material causation, 10, 169. *See also* factual causation
McGhee v National Coal Board [1972] 3 All E.R. 1008, 1 W.L.R. 1, 36
Miller v Minister of Pensions, 122
 multiple defendants, 77, 79
- Napp Pharmaceuticals Holdings Ltd v Director General of Fair Trading*, 123
- OLG Karlsruhe 11.06.2010, 6-U 118/05 Kart, 174
 OLG Karlsruhe 28.1.2004, 6 U 183/03 NJW 2004, 2243, 172
 overcharge, 1, 9, 16–17, 26, 29–30, 75, 95, 102, 105, 138, 149–150, 165–167, 169–170, 172–173, 175–176, 178, 180, 182–184, 186–188, 190–191, 196
 overdetermined causation, 81
- parallel behaviours, 111
 Paris Court of Appeal, SNC Doux Aliments Bretagne etc v. SAS Ajinomoto Eurolysine, No 07/10478, 10 June 2009, 94
 passing on, 167
 cause-in-fact, 169
 English law, 178
 EU law, 183
 French law, 175
 German law, 172
 Italian law, 177
 legal causation, 170
perte de chance. *See* loss of chance
 preemption, 104
 preponderance of the evidence, 116. *See also* balance of probability
 presumption, 145
 carte harm, 148
 conclusive, 146
 EU courts, 147
 EU law, 148
 evidential, 146
 factual presumption, 145–146
 in English law, 153
 in EU law, 149
 in French law, 158
 in German law, 155
 in Italian law, 159
 irrebuttable, 145
 legal presumption, 145–146
 persuasive, 146
 presumption of innocence, 150
 provisional, 146
 rebuttable, 145
 price effects, 112
 private antitrust enforcement, 116
 protective scope of the rule, 59
 probabilistic liability, 117
 procedural autonomy, principle of, 119
 proof, 107
 proof proximity, 159
 proportional liability, 81
 protective scope of a law, 57
 protective scope of the rule, 61
 proximate cause, 46
 punitive scope, 62, 111
 pure economic loss, 11, 26, 69, 94, 132, 164
 pure financial losses, 12
- Rambus Inc. v FTC*, 522 F.3d 456 (D.C. Cir. 2008), 47
 Regulation 1/2003, 64, 118
 relaxation, proof rules, 111
 responsibility in solidum. *See* joint and several liability
 right of standing, 60
 right to compensation, 1, 50, 55, 63, 65, 109, 113, 115, 150, 173, 182, 189
 risk allocation, 141
 risk-liability theory, 137
- Sainsbury's Supermarkets Ltd v Mastercard Incorporated and Others* [2016] CAT 11, 88, 187
 scientific or economic uncertainty, 141
 scope of the norm, 62
 scope of the rule, 39
 secondary harms, 116, 164
 single economic entity principle, 85
 singular causation, proof of. *See* causation, proof
 solidary responsibility. *See* joint and several liability
 specific causation, 6–7, 24, 39, 72, 88, 132, 137, 147, 160
 standard of proof, 110, 114
 and balance of probabilities, 121
 free evaluation of the evidence, 124
 in English law, 122

- standard of proof (cont.)
 in EU law, 114
 in French law, 127
 German law, 121, 124
 in Italian law, 121, 129
 in national systems, 116
 intime conviction, 120–121, 125
 relaxation of, 151
 requisite legal standard, 115
 statutorily protected interest, 11, 26, 38, 164
 stochastic causality, 137
 subjective right, 11, 26, 164
- T-112/07 Hitachi Ltd, Hitachi Europe Ltd and Japan AE Power Systems Corp. v European Commission* [2011], 147
- Tele Atlas N.V. v NAVTEQ Corp.* No C-05-01673, 2008 WL 4809441, at *22 (N.D. Cal. 2008), 46
- Tribunal de Commerce de Nanterre SA *Les Laboratoires Pharmaceutiques Arkopharma v Ste Roche etc.*, 11.5.2006, n. 02004F02643, 177
- Tribunal de Commerce de Paris, *Société les Laboratoires Juva Production v SAS Roche*, 10 September 2003, No. RG2003048044, 176
- Tribunale di Milano, 27 December 2013
 Brennercom Spa v Telecom Italia Spa, no 22423/2010, 102
- Tribunale di Milano, *Brennercom Spa v Telecom Italia Spa*, 3 March 2014 no 14802/2011, 102, 139
- Tribunale di Milano, OK Com Spa c. Telecom Italia SpA, 13 February 2013, R.G. 76568/2008, 103
- Tribunale Milan, *SEA v Swiss International Air Lines* 27.06.2016, n 7970/2016, 184
- umbrella effect, 188
 underdetermined causation, 82
United States v Microsoft 253 F.3d 34 (D.C. Cir. 2001), 46, 137
- WH Newson Holding Ltd & Ors v IMI Plc & Ors* [2013] EWCA Civ 1377, 178
- witnesses, 106
- Zenith Radio Corp. v Hazeltine Research, Inc.* 395 U.S. 100 (1969), 46
- 2 *Travel Group PLC (in liquidation) v Cardiff City Transport Services Ltd* [2012] CAT 19, 30, 99, 139