

Introduction

Competition law infringements may cause economic losses which are protected by EU and national laws. Liability for compensation of private damages in EU competition law is the result of the judicial interpretation of Articles 101 and 102 TFEU. The Court of Justice of the European Union (CJEU), with the two seminal cases *Courage*¹ and *Manfredi*,² introduced the principle of right to compensation for violation of competition law, stating that ‘any individual can claim compensation for the harm suffered where there is a causal relationship between that harm and an agreement or practice prohibited’.³ Article 3 of Directive 104/2014 (the ‘Damages Directive’) on competition damages actions has then imposed the transposition of this principle into national laws.⁴

The compensatory principle is based on a corrective justice regime whereby the duty to repair the damage burdens only the subjects that have caused it. A fundamental element of responsibility for such harms is causation, as it attributes responsibility to a specific person for a specific harm. An antitrust infringement restricts or distorts competition in a relevant market, and it potentially may affect all individuals active in the same market. Direct purchasers may claim the disgorgement of overcharges paid and indirect purchasers the compensation of the overcharge passed through the supply chain, while competitors aggrieved by exclusionary conducts may claim compensation for market foreclosure and lost chances, to mention just a few. The consumers or undertakings who see their assets

¹ Case C-453/99 *Courage Ltd v Bernard Crehan and Bernard Crehan v Courage Ltd and Others* ECR I-06297.

² Joined Cases C-295/04 to C-298/04 *Vincenzo Manfredi v Lloyd Adriatico Assicurazioni SpA* [2006] ECR I-06619.

³ *Ibid.*, para 61.

⁴ Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on Certain Rules Governing Actions for Damages under National Law for Infringements of the Competition Law Provisions of the Member States and of the European Union, OJ L 349 2014.

diminished in value would base their claims on a loss of welfare caused by the antitrust infringement. Accordingly, they will have to prove that the economic loss was caused by the antitrust infringement and not by other contextual market factors. The problem of causation in domestic laws has a long and diverse history that shaped different approaches in the legal doctrines of the European member states. Hence, national courts tend to assess the causal link adopting different standards and approaches.

The European Union law, however, provides little guidance to the judge in the assessment of the causal connection. The CJEU's decisions together with the Damages Directive confer the right to stand to any individual harmed by the infringement but do not deal with the instantiation of causation. It follows that, in accordance with Article 3, Regulation 1/2003, national courts have to apply their domestic laws of obligations within the limits drawn by the principles of effectiveness and equivalence. The claimant in actions for damages has, therefore, to prove the breach of law, the damage and the causal connection between the two, mainly relying on the applicable national laws of substance and procedure.

The analysis of antitrust litigation in Europe reveals that only a minority of cases are based on claims for compensation of damages. Of these cases, a very small proportion is initiated by indirect purchasers or subjects aggrieved by dead-weight losses. The common thread connecting these situations is the causal uncertainty of the claim that makes the assessment of liability particularly complex. Surprisingly, both scholars and the Damages Directive have devoted little attention to the study of the causal connection between the infringement of competition law and the damage.⁵

This book first addresses the concept of causation in claims for damages for infringement of competition law, discussing the main and more relevant approaches in tort law theory (Chapter 1). Therefore, it discusses the different approaches for the assessment of causation in competition law in national courts (Chapter 2). It then describes and critically analyzes the approach to causation adopted by EU law and courts (Chapter 3). In the fourth chapter, the book delves into the fundamental issues of causal uncertainty in competition law damages actions (Chapter 4), to which follows the analysis of the standards of proof for causation (Chapter 5). It then focuses on particular cases of causal uncertainty that may justify the relaxation of proof rules in competition law (Chapter 6). Finally, it explores the causal proof requirements for indirect and secondary antitrust damages (Chapter 7). A conclusion follows.

⁵ See Ioannis Lianos, 'Causal Uncertainty and Damages Claims for the Infringement of Competition Law in Europe' [2015] 34 *Yearbook of European Law* 170, and Hanns A Abele, Georg E Kodek and Guido K Schaefer, 'Proving Causation in Private Antitrust Cases' [2011] 7 *Journal of Competition Law and Economics* 847.

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Causation in Competition Law

A competition law infringement may cause economic harm simultaneously to several market participants. Economic harms may indeed flow from an antitrust infringement in the form of price overcharges or other economic loss – for instance, lost profits or lost chances. Tort laws generally establish the liability of the infringer through the principle of corrective justice, based on which the wrongdoer has a duty to repair only the wrongful losses that their conduct has caused. Along these lines, the principle of corrective justice dispenses a general rule whereby a person harmed by a tort must be able to recover damages to restore the same situation, at least from an economic perspective, existing before the breach.¹ The tortfeasor will be condemned, when possible, to the *restitutio ad integrum* or, alternatively, to pay a financial reparation that restores in its economic equivalent the situation existing before the breach.² To obtain the compensation of damages, the claimant has to substantiate the infringement, the prejudice suffered and the causal connection between the two.³

¹ Ernest Joseph Weinrib, *Corrective Justice* (Oxford University Press, 2012) 17; Allan Beever, *Rediscovering the Law of Negligence* (Hart, 2009) 45 ff; Simon Deakin, Angus Johnston, and Basil Markesinis, *Markesinis and Deakin's Tort Law* (Oxford University Press, 2012) 38.

² This principle was, for example, reiterated in *Devenish Nutrition v Sanofi Aventis* [2007] EWHC 2394, where the court stated that compensation has to 'place a person who has suffered harm in the position in which that person would have been had the infringement of competition law not been committed'.

³ For a comparative overview of causation in European tort laws, see Cees Van Dam, *European Tort Law* (Oxford University Press, 2013) 308 ff; Marta Infantino and Eleni Zervogianni, *Causation in European Tort Law* (Cambridge University Press, 2017); Christian von Bar, *The Common European Law of Torts*, vol II (Oxford University Press, 2000) 433–498; Isabel C Durant, 'Causation' in Helmut Koziol and Reiner Schulze (eds), *Tort Law of the European Community* (Springer, 2010).

The European Union law grants the right to claim for damages to anyone harmed by an antitrust infringement, be they consumers, undertakings or public authorities.⁴ This is the legacy of the *Courage*⁵ and *Manfredi*⁶ cases and also the text of the Directive 104/2014.⁷ However, this should not be considered a rule setting unlimited responsibility on antitrust infringers. The claimant, in each specific instance, has to prove the ‘causal relationship between the harm suffered and the prohibited arrangement’.⁸ It is, indeed, through the filter of causation that national courts establish the responsibility of the wrongdoer and select the damages that are compensated for the infringement of EU competition law. Despite this, scholars have generally focused on the right to stand and the quantification of damages rather than causation.⁹ The 2014 Damages Directive solved, once and for all, the doubts regarding the right to stand, according it to any legal or natural person who has suffered harm caused by a violation of competition law. However, the Directive avoids dealing with causation and leaves its definition to the laws of obligation of the member states. On the other hand, competition law damages actions show a marked causal uncertainty. In this vein, the impact study ordered by the European Commission in 2007 pointed out that ‘it seems that the success of a claim in the EU would be dependent on whether the plaintiff is actually able to prove causation’.¹⁰ Despite this, causation in competition law litigation continues to be one of the most underexplored topics on both sides of the Atlantic.¹¹ From this comes the need to identify a proper theory of causation and

⁴ Article 1 Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on Certain Rules Governing Actions for Damages under National Law for Infringements of the Competition Law Provisions of the Member States and of the European Union, OJ L 349; Joined Cases C-295/04 to C-298/04 *Vincenzo Manfredi v Lloyd Adriatico Assicurazioni SpA* [2006] ECR I-6619.

⁵ Case C-453/99 *Courage Ltd v Bernard Crehan and Bernard Crehan v Courage Ltd and Others* [2001] ECR I-06297.

⁶ Joined Cases C-295/04 to C-298/04 *Vincenzo Manfredi*.

⁷ Directive 2014/104/EU.

⁸ Joined Cases C-295/04 to C-298/04 *Manfredi v Lloyd*, para 17.

⁹ Ever since the adoption of Regulation 1/2003, academic research has tried to analyze and define such requirements. Scholars have tried to explain the proof of the antitrust infringement to smooth the hurdles for the quantification of the damages and to propose solutions to several procedural rules. The quantification of damages may become particularly complex in antitrust litigation because of the deep use of econometrics and economic theories. However, judges generally have the power to estimate the amount of damages, therefore avoiding their precise calculation.

¹⁰ Andrea Renda, Roger J van den Bergh and Roberto Pardolesi, ‘Making Antitrust Damages Actions More Effective in the EU: Welfare Impact and Potential Scenarios: Final Report’ (2007) Contract DG COMP/2006/A3/012 36, available at http://ec.europa.eu/competition/antitrust/actionsdamages/files_white_paper/impact_study.pdf.

¹¹ See, in the United States, Michael A. Carrier, ‘A Tort-Based Causation Framework for Antitrust Analysis’, [2001] 77 *Antitrust Law Journal* 991; similarly observe, for the EU, Ioannis Lianos, ‘Causal Uncertainty and Damages Claims for the Infringement of Competition Law in Europe’ [2015] 34 *Yearbook of European Law* 170, 172.

coherent rules for the proof of causation in antitrust litigation.¹² European jurisdictions apply the general rules on non-contractual liability to the illicit antitrust behaviour.¹³ However, damages for infringements of competition law have shown peculiarities which distinguish them from other torts. Antitrust infringements often impact on sophisticated supply chains active in complex market structures,¹⁴ which make the establishment of causative links difficult. Moreover, national laws of obligations have to be interpreted in accordance with the EU law that they trigger (i.e., duty of consistent interpretation),¹⁵ whereby one has to determine if the EU law has developed any independent concept or interpretative canon.

1.1 CAUSATION: A PRIMER

1.1.1 *The Function of Causation*

The law continuously applies causal ideas to establish connections between events. Causal ideas are embodied in the language of the legislation and are an integral part of the reasoning of judicial decisions to attribute responsibility for wrongful conducts.¹⁶ They are, in other words, the backbone of corrective justice.¹⁷ According to the principle of corrective justice, the tort law system provides remedies that apply when a person's wrongful conduct interferes with another person's rights and property.¹⁸ The aim of corrective justice is indeed to restore the position of the victim before the wrong took place. Thus, this criterion places responsibility upon the injurer as both a moral and a legal duty to compensate.¹⁹ And it does so by connecting the victim to the injurer,²⁰ as it burdens the injurer for compensating the victim, blaming the former for the harm caused to the latter. In other words, according to this principle, p has to compensate d if p has caused an economic harm to d, and the compensation has to be limited to the damage inflicted. The corrective justice criterion comprises first-order

¹² This is the observation made in one of the very few papers published on the topic: Hanns A Abele, Georg E Kodek and Guido K Schaefer, 'Proving Causation in Private Antitrust Cases' [2011] 7 *Journal of Competition Law and Economics* 847.

¹³ See further Chapter 2 and Section 5.6 for a comparative overview of the different approaches.

¹⁴ David Ashton and David Henry, *Competition Damages Actions in the EU: Law and Practice* (Edward Elgar Publishing, 2013), 39.

¹⁵ Damian Chalmers, Gareth Davies, and Giorgio Monti, *European Union Law: Cases and Materials* (Cambridge University Press, 2010), 296.

¹⁶ For an analysis of how causal ideas are used in the law, see Michael S Moore, *Causation and Responsibility: An Essay in Law, Morals, and Metaphysics* (Oxford University Press, 2010).

¹⁷ Tort laws also have a deterrent function; on this aspect, see Section 1.4.

¹⁸ David Miller, 'Justice' in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy*, Fall 2017 Edition. (Metaphysics Research Lab, Stanford University, 2017) <https://plato.stanford.edu/archives/fall2017/entries/justice/>, accessed 1 February 2019.

¹⁹ Moore (n 16). Who observes that the principle of corrective justice mandates that 'legal liability tracks moral responsibility', at 4.

²⁰ Miller (n 18).

duties, which prohibits a conduct or inflicts an injury, and second-order duties, which impose an obligation to repair harm arising upon the breach of a first-order duty.²¹ Between first and second order duties there is a causal link.

Causation has, therefore, the function of linking the victim to the tortfeasor. Let us assume that p allegedly harmed d while performing the action x. In order to place responsibility for the harm on p, the first causal question to solve will be if the harm (y) would have happened had p's action not occurred. Causation therefore attributes responsibility for the harm by linking two events (x and y) and attributing them to a person (d). But causation is also said to be able to predict a certain outcome on the basis of its preconditions. For this reason, it is common to ascribe three functions to causation, whereby causation is (1) forward looking, (2) backward looking and explanatory and (3) attributive.²² According to the first function, causation studies the conditions that lead to certain results, allowing the formulation of predictions and thus fostering prevention.²³ This forward-looking quality is appreciated, for example, in policy analysis, philosophy and economics. The second function relates instead more closely to the language and reasoning of law. Here, causation serves to spot from a set of conditions the one that can explain an event or a class of events.²⁴ It explains the connection between two events – a harm and a prior action – that would otherwise be independent from each other. The third function is attributive and – together with the second – ascribes responsibility to a specific agent.²⁵

1.1.2 *General Causation and Specific Causation*

When we refer to events, we mean either a general class of events or specific events.²⁶ By the same token, causation may be general, meaning that it considers an abstract event and its outcome, or specific, which asks whether outcome x was caused by action y.²⁷ General causation asks whether a type of action can produce an outcome. For instance, can a cartel on car parts cause an economic harm to final customers (car buyers)? The question is usually answered through causal associations between the alleged cause and the damage.²⁸ Often, in competition law, statistics and econometrics

²¹ Jules Coleman, Scott Hershovitz and Gabriel Mendlow, 'Theories of the Common Law of Torts' in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy*, Winter 2015 Edition (Metaphysics Research Lab, Stanford University, 2015) <https://plato.stanford.edu/archives/win2015/entries/sort-theories/>, accessed 1 February 2019.

²² Antony Honoré, 'Causation in the Law' in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy*, Winter 2010 Edition (Metaphysics Research Lab, Stanford University, 2010), available at <http://plato.stanford.edu/archives/win2010/entries/causation-law/>, accessed 30 August 2014.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ HLA Hart and Tony Honoré, *Causation in the Law* (Oxford University Press, 1985) 41 ff.

²⁷ For an analysis of general and specific causation, see John Leslie Mackie, *The Cement of the Universe: A Study of Causation* (Clarendon Press, 1980) 29 ff.

²⁸ Lara Khoury, *Uncertain Causation in Medical Liability* (Bloomsbury Publishing, 2006) 50.

establish the link between the abstract action (a cartel) and a general consequence (economic damage). On the other hand, specific causation asks whether action *x* caused harm *y*. Did the cartel on car parts *x* cause the economic harm to the consumer-claimant *y*? In this case, it is indispensable to establish a factual and legal connection between the action and the damage on a specific occasion.²⁹

Judges take their decisions according to specific causation, in theory. What matters for the attribution of liability is whether the defendant's action caused the actual damage, not if potentially it is able to do so. However, the role of general causation is to provide an important part of the evidence for specific causation. If the former is not possible, neither will be the latter. By the same token, in order for the latter to be possible, the former also has to be proven when this is not already of common knowledge.³⁰ Disputes over general and specific causation hence arise in case of causal uncertainty, which is when it is unclear whether a class of events can cause a certain damage (uncertainty over general causation) and, by consequence, it is not possible or particularly difficult to prove that the defendant caused the claimed harm (uncertainty over specific causation). As it will be better explained in Chapter 4, competition damages actions often rely, to a large extent, on the proof of general causation to infer specific causation. The following chapter analyses the main theories of causation and their importance for competition law enforcement.

1.2 THEORIES OF CAUSATION

One can approach causation as a unitary topic from an epistemological point of view, for it defines the tools to establish connections between events.³¹ But, as already remarked in philosophy, causation is 'one word [but] many things'.³² Every field of knowledge engages – in a way or another – with establishing causality links between events. Philosophy, mathematics, physics, economics, medicine and the law are only some examples. In this vein, a meta approach to causation aims at the creation of general rules able to identify appropriate links for any relation of agency effect.³³ However, a link between a cause and its effect, drawn to the satisfaction of one of them, does not necessarily satisfy the requirements of the other. While exact sciences approach causation from a deterministic perspective, meaning that they seek full certainty about the relationship of cause and effect, for other areas of

²⁹ Sandy Steel, *Proof of Causation in Tort Law* (Cambridge University Press, 2015) 6.

³⁰ On proof of causation in competition damages actions, see Chapters 5 and 6.

³¹ Helen Beebe, Christopher Hitchcock and Peter Menzies, *The Oxford Handbook of Causation* (Oxford University Press, 2009); Jon Williamson, 'Causal Pluralism versus Epistemic Causality' [2006] 77 *Philosophica-Gent* 69.

³² Nancy Cartwright, 'Causation: One Word, Many Things' [2004] 71 *Philosophy of Science* 5 (2004) 805–820.

³³ Julian Reiss, 'Causation in the Social Sciences: Evidence, Inference, and Purpose' [2009] 39 *Philosophy of the Social Sciences* 1, 20–40.

knowledge, it suffices to establish a probable causal link.³⁴ That is because causal connections often follow irregular paths, and there is only limited knowledge allowing one to understand them. For example, science demonstrated that smoking is a cause of lung cancer, but some smokers do not develop this cancer.³⁵ By the same token, in competition law, exploitative conducts are supposed to cause economic harm to buyers or suppliers, but this harm does not always materialize. Causal uncertainty is therefore the result of limited information that the fact-finder often faces in the application of the law.³⁶ The impossibility of establishing perfectly regular patterns for causation in the law imposes to depart from fully deterministic approaches.³⁷ Moreover, the law is not only concerned with finding a factual connection between events; it also aims to establish responsibility for that harm. Causation in law additionally asks whether there is a legal link between the harm and the action, thus determining responsibility.

Causation in the law is a particularly elusive concept whose definition is influenced by the extent and importance of the other elements of the non-contractual obligation, in particular the tortious conduct and the harm. Question arises on whether a specific agency is cause of some other events, only their occasion, a mere condition or part of the circumstances in which the cause operated.³⁸ In this regard, Hart and Honoré asked if there is any principle governing the selection of the set of conditions of events or if it is arbitrary, irrational, the mere survival of the metaphysical beliefs in the superior ‘potency’ possessed by some events.³⁹ While causal uncertainty cannot be fully displaced, correct use of causation theories can help unravel the connections between infringements and their harmful effects. Without any pretention to be exhaustive, this chapter aims to present these theories and the approaches to causation that are particularly relevant for the analysis of antitrust infringements.

1.2.1 *Approaches to Causation*

Outside the law, two seminal approaches have founded the entire scientific and philosophical speculation on causation: the empirical method of Hume and the metaphysical forged by Kant.⁴⁰ Of them, only the former has become part of the

³⁴ Carl Hoefer, ‘Causal Determinism’ [2016] Stanford encyclopedia of philosophy <https://plato.stanford.edu/entries/determinism-causal/>.

³⁵ Christopher Hitchcock, ‘Probabilistic Causation’ in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy*, Fall 2018 Edition (Metaphysics Research Lab, Stanford University, 2018), available at <https://plato.stanford.edu/archives/fall2018/entries/causation-probabilistic/>, accessed 4 February 2019.

³⁶ On the different sources of causal uncertainty, see also Steel (n 29) 5 ff.; Khoury (n 28) 5 ff.

³⁷ For a more in-depth analysis of determinism, probabilities and causation in competition law, see Chapter 5.

³⁸ HLA Hart and Tony Honoré, *Causation in the Law* (Oxford University Press, 1985) 112.

³⁹ *Ibid.*, 17.

⁴⁰ Michael S Moore, *Causation and Responsibility: An Essay in Law, Morals, and Metaphysics* (Oxford University Press, 2010) 41 ff.

legal discourse.⁴¹ For Hume, causation can only be established in terms of empirical regularities involving classes of events by calling ‘to mind their constant conjunction in all past instances’.⁴² John Stuart Mill further built on this elaboration of regularity theories expounding a system of inductive inferences for causal reasoning.⁴³ The subsequent philosophical and scientific doctrine developed on these bases a number of other theories and definitions – such as the counterfactual, for which it is a cause ‘something that makes a difference, and *the* difference it makes must be a difference from what would have happened without it’.⁴⁴ In addition to this, scholars developed the statistical model,⁴⁵ the ‘structural equation modelling’⁴⁶ and several others.⁴⁷ While these approaches differ in the means of research and the description of causation that they provide, they all have in common the research of an explanation of existing links between facts.

Put differently, the lawyer is not content with finding any factual connection between events, as only a legally relevant antecedent can determine the event and therefore become a cause of it.⁴⁸ Compared to other disciplines,⁴⁹ causation in law requires the analysis of only some of the circumstances of the case, which are relevant to determine the causal connection. As such, only some items of the event are legally relevant to the causation of the damage. For instance, in the case of a cartel, the fact that the tortfeasor sold the good subject to infringement to the claimant and that an overcharge was applied to the price are relevant aspects of the agency, while information about – for instance – the characteristics of the products may have no standing for establishing causation. Since Collingwood,⁵⁰

⁴¹ Despite the attempt to create comprehensive theories of causation explaining its function in order to attribute responsibility in history, law and other disciplines, lawyers have doubted that such definitions can be effective; see *ibid.*, 90.

⁴² In this well-known excerpt, Hume observed that ‘Without further ceremony, we call the one cause and the other effect, and infer the existence of one from that of the other’, David Hume, *A Treatise of Human Nature* (Clarendon Press, 1817), 87/61.

⁴³ The most diffuse canon advanced by Mill is the ‘Direct Method of Difference’ for which ‘If an instance in which the phenomenon under investigation occurs, and an instance in which it does not occur, have every circumstance save one in common, that one occurring only in the former; the circumstance in which alone the two instances differ, is the effect, or cause, or a necessary part of the cause, of the phenomenon’. John Stuart Mill, *A System of Logic, Ratiocinative and Inductive: Being a Connected View of the Principles of Evidence and the Methods of Scientific Investigation* (Harper & Brothers, 1858), 455.

⁴⁴ David Lewis, ‘Causation’ [1973] 70(17) *The Journal of Philosophy* 556–567.

⁴⁵ See, in particular, the ‘Neyman-Rubin Model’: Donald B. Rubin, ‘Causal Inference Using Potential Outcomes’ [2005] 100 *Journal of the American Statistical Association* 469.

⁴⁶ Roy J Epstein, *A History of Econometrics* (North-Holland Amsterdam, 1987).

⁴⁷ John Losee, *Theories of Causality: From Antiquity to the Present* (Transaction Publishers, 2012).

⁴⁸ The fact that the widgets sold by the antitrust infringer were of red colour will rarely be of legal significance for the determination of causation in an antitrust action, despite being a factual aspect that may result relevant for other causal enquiries.

⁴⁹ Included economics that in competition law plays a fundamental role, see further Section 6.6.

⁵⁰ RG Collingwood, ‘Causation in Practical Natural Science’ [1937] 38 *Proceedings of the Aristotelian Society* 85.

the quest for a specific notion of causation related to legal responsibility has become independent. According to this view, the role of the legal theory of causation is to define the meaning of the word cause (and its several synonyms) in statutes, regulations and judicial decisions.⁵¹

The difficulty to define causation is exacerbated by the different legal traditions of civil and common law countries, which use different approaches to material and legal causation. This problem partly explains the reason for the adoption of a broad definition of causation in the Draft Common Frame of Reference (DCFR) on Principles, Definitions and Model Rules of European Private Law;⁵² an only slightly more detailed definition in the Principles of European Tort Law (PETL);⁵³ and the refusal to define causation in the Damages Directive.

Despite the different legal backgrounds, both civil law and common law countries adopt a multistage inquiry approach to causation, whereby the judge establishes the existence of material causation between the events submitted to the court and their effects. In addition, the judge has to select the causes which are legally relevant for the causation of the harm,⁵⁴ delimiting the damages that the defendant is bound to compensate. To do so, however, it is fundamental to first determine the nature of the harm that has to be compensated. As the following chapter explains, the nature of antitrust harms has an important impact on the definition of the causal conditions and on causal uncertainty.

⁵¹ Ibid.

⁵² Article 4:101 'General rule (1) A person causes legally relevant damage to another if the damage is to be regarded as a consequence of that person's conduct or the source of danger for which that person is responsible. (2) In cases of personal injury or death the injured person's predisposition with respect to the type or extent of the injury sustained is to be disregarded'. Draft Common Frame of Reference (DCFR) on Principles, Definitions and Model Rules of European Private Law, available at http://ec.europa.eu/justice/policies/civil/docs/dcf_r_out_line_edition_en.pdf.

⁵³ Helmut Koziol and others, *Principles of European Tort Law (PETL): Text and Commentary* (Springer, 2005).

⁵⁴ For an introduction to the two-stage causation framework, see, among the others, Cees Van Dam (n 3) 310 ff, *European Tort Law* (Oxford University Press, 2013); Richard W Wright, 'Causation in Tort Law' [1985] 73 *California Law Review* 1735–1828; Håkan Andersson and Bénédicte Winiger, *Digest of European Tort Law* (Springer, 2007) 1, 1; William Lloyd Prosser, *Prosser and Keeton on the Law of Torts* (West Pub. Co., 1984); Simon Deakin, Angus Johnston, and Basil Markesinis, *Markesinis and Deakin's Tort Law* (Oxford University Press, 2012); Fowler Vincent Harper, Fleming James, and Oscar S. Gray, *The Law of Torts* (Little, Brown, 1986); Robert E. Keeton, *Legal Cause in the Law of Torts* (University Microfilms, 1986); Walter Gerven, Jeremy Lever, and Pierre Larouche, *Tort Law* (Hart, 2000); Forschungsstelle für Europäisches Schadenersatzrecht Wien und Österreichische Akademie der Wissenschaften Forschungsstelle für Europäisches Schadenersatzrecht, *Digest of European Tort Law* (Springer, 2007); Jaap Spier, Francesco Donato Busnelli, and European Centre of Tort and Insurance Law, *Unification of Tort Law: Causation* (Kluwer Law International, 2000); Steven Shavell, 'An Analysis of Causation and the Scope of Liability in the Law of Torts' [1980] 9(3) *The Journal of Legal Studies* 463–516; William M. Landes and Richard A. Posner, 'Causation in Tort Law: An Economic Approach' [1983] 12(1) *The Journal of Legal Studies* 109–134.