

Causation Factual.

The 'But For' Test.

But for defendant's breach the damage would not have arisen.

C must prove that D's breach was as a matter of fact a cause of the damage

Barnett v Chelsea & Kensington Hospital

Wilsher v Essex

Basis for Compensation – All or Nothing

Must prove >50% - if successful get 100% damages.

courts look at the loss – put C in position as if tort hadn't happened.

Hoston v East Berkshire

Gregg v Scott

Exceptions.

Sometimes not fair to apply the rule.

Cumulative/Intermediate Cause:

More than 1 defendant.

Cook v Lewis

Summers v Tice

Sindell v Abbott

Supervening Events

before trial there is a 2nd event which caused same damage.

Baker v Willoughby

Jobling v Associated Diaries

The McGhee/Fairchild Principle

Where the 'BUT FOR' test doesn't apply/not fair to apply.

Courts don't have to apply the general rule:

Fairchild v Glenhaven Funeral Services

McGhee v NCB

When does the principle apply??

Chester v Afshar

Should only apply for an obvious reason:

Sanderson v Hull

Wooten v J Docter

Unlikely to apply against NHS – Policy reasons:

Gregg v Scott

However - *Bailey v Ministry of Defence*

Assessment of Damages:

'Loss of Chance' - Contract Law.

Liability should be divided between numerous defendants depending on their share:

Barker v Corus

Compensation Act 2006

s.3 – to make it easier for claimants:

all the defendants are liable – no longer up to claimant, they can choose from the defendants who to sue.

Or should there be a special rule for asbestos cases??

Sienkiewicz v Grief (UK) Ltd