

Article Summaries

Risk disclosure, causation and the role of *Chester*

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This article explores the scope and application of *Chester v Afshar* following *Montgomery v Lanarkshire Health Board* and more recent decisions that have followed *Montgomery*. It will attempt to address residual confusion concerning the impact of the decision in *Chester* and argue that inappropriate recourse to *Chester* is the source of much of the confusion surrounding causation and risk disclosure. Following the recent decisions in *Duce v Worcestershire Acute Hospitals NHS Trust* and *Diamond v Royal Devon & Exeter NHSFT* this article argues that far from being an exceptional case *Chester* is a very ordinary case and not the special solution to tricky causation problems.

Public benefit, private burden? The role of social utility in breach of duty decisions in negligence

Keith Patten

It seems to be generally accepted that courts, when considering whether or not a defendant is in breach of duty in negligence, must consider, among other factors, the social utility of the defendant's activities. While that proposition seems to be generally accepted, the cases themselves are somewhat more equivocal as to the relevance and importance of social utility in this exercise. This article considers the case law on the issue of social utility and concludes that while it may indeed be a relevant consideration, it will be decisive in the outcome of cases only relatively rarely. It then goes on to consider whether courts should take account of social utility when assessing a defendant's possible breach of duty and concludes that they should not, because doing so potentially leaves individual injured claimants bearing a loss which should be borne by society as a whole.