

APIL Guide to Evidence

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Published by
Jordan Publishing Limited
21 St Thomas Street
Bristol BS1 6JS

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British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978 0 85308 756 4

Typeset by Letterpart Ltd, Reigate, Surrey

Printed in Great Britain by CPI Antony Rowe, Chippenham, Wiltshire

PREFACE

PI and clinical negligence claims come in all shapes and sizes. They cover the gamut of human experience from the minor rear-end shunt on the slip road from Watford junction to the M25 to the decades-ago exposure to asbestos whilst working in docks that have long since been developed into luxury flats to the tragic but all too frequent cerebral palsy claim.

All of these cases depend on showing what happened, who did it and why in sufficient detail to impress a defendant, or more likely its insurer, to pay up or a judge, if it goes that far, to order the defendant and its insurer to do so.

Whilst we all press our claims for the benefit of our injured clients, we are all, every day, in the running (and turning down) of our cases dealing with, or looking for, or assessing evidence. Without knowing what the rules of evidence are and in particular how to use evidence and what the court-imposed limits are in using evidence a claim is likely to founder. No properly advised defendant is going to admit liability or make a decent offer if the evidence is not there or cannot be used.

Although we know that the vast majority of personal injury and clinical negligence cases never see the inside of a court room, the best prepared cases (and therefore the most profitable for the claimant and for his solicitors) are those that are prepared on the basis that the case will end up before a judge. Understanding this then fully means that a practitioner knows early on which cases to run as well as which ones to drop. Whether pursuing a particular line of enquiry is worth the effort or even necessary.

In this book the editorial team, which consists of both barristers and solicitors, hope to provide the practitioner with all the detail necessary to understand the fundamental importance of evidence and how the court will allow the parties to use it, from the initial steps of investigating a case through to the trial itself and the appellate process.

We have tried our best to state the law as we understand it as at February 2011 but any mistakes and errors remain mine as editor. My thanks also to Lycia Parker, who was my pupil at the time of the birth of the book, for all her hard work and help on the text.

I hope you find the text useful.

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February 2011