Abbring, J. 180, 181
Abel, R. 447, 448
Abraham, K. 36, 41, 45, 51, 55, 56, 57, 58, 59, 151, 169, 170, 177, 178, 185
Abrahamse, A. 188, 596, 599
accidents
automobiles see automobiles
incompensable harms 440–42, 451
industrial accidents, consensual arrangements 621–3
no-fault compensation see no-fault accident compensation systems
physical injury see physical injury, liability and regulation as remedies
see also injury; medical malpractice
Adams, J. 295
Adler, M. 451
adverse selection
contingent-fee contracts in litigation 399, 403, 404, 405
contracting over malpractice liability 53–4
and liability insurance, moral hazard 180–81, 186
agency costs
liability insurance 171, 177
issues, group litigation see group litigation, agency issues
contingent-fee contracts in litigation 396–7 and vicarious liability, 55–9, 234–60
air pollution 615, 616–17
Aiuppa, T. 601
Akerlof, G. 75–6
Alberini, A. 229
Aldy, J. 439, 449
Alexander, J. 266, 349
Ali, A. 229–30
Allen, R. 309
Anderson, A. 594, 597
Anderson, C. 371
Anderson, J. 402
Anderson, W. 535
Andrews, L. 33, 34, 40, 45, 46, 58, 181, 521
Angell, M. 295
Angrist, J. 527, 535, 562
Antolini, D. 514
Appelbaum, B. 475
Arrow, K. 36, 37, 38, 47, 179, 180, 183, 446, 592
Ashenfelter, O. 439, 449
Ashford, N. 542
Asmat, D. 178
asymmetric information
bounded rationality in settlement process 362–4, 370
case quality and contingent-fee contracts 399–400, 406
negative expected value (NEV) suits 349–53
physical injury, liability and regulation as remedies 609–10
and settlement see settlement, law and economics, existing claims, asymmetric information models
settlement and primary behavior 353–5
vicarious liability of firms, 55–9, 234–69
see also information
Atiyah, P. 624
attorney incentives, contingent-fee contracts see contingent-fee contracts in litigation, fee structures, implications of different attorney incentives
Austin, D. 229
Australia
group litigation 264
Overseas Tankship v. Morts Dock & Engineering Co. 134
third-party financers and group litigation 289
automobiles
accidents, physical injury, liability and regulation as remedies see physical injury, liability and regulation as remedies, automobile accidents
insurance, no-fault accident compensation systems see no-fault accident compensation systems, auto insurance
Avraham, R. 45, 186, 389, 430, 463, 469, 480, 481, 527, 528, 529, 536, 537, 551, 552, 592
Ayers, I. 186
Babcock, Linda 360–82
Bagenstos, S. 475
Baicker, K. 533, 535
bounded rationality in settlement process 360–82
bounded rationality in settlement process, psychological approach and self-serving biases 364–75
asymmetric information, importance of 370
bias blind spot 371–2
biased cognitive processing causing 365–8
biased cognitive processing causing, positive testing 366, 369–70
biased cognitive processing causing, storing and retrieving information 367–8
counter-arguing 366–7
damage caps 373–4
damage caps and motivated anchoring 373–4
debiased litigants, possibility of 370–73
game-theoretical models of bargaining, incorporation into 375–7
general demonstrations 365
goal-inconsistent evidence 366–7
group polarization 373
introspection illusion 371
lawyer bias 372–3
litigation fees, changing nature of 375
policy implications 373–5
policy implications, discovery prediction 374–5
pre-trial negotiations 371
settlement prospects, evidence of affecting 368–70
settlement prospects, evidence of affecting, likelihood of going to trial 369
settlement prospects, evidence of affecting, motivational factors 369
split awards 374
bounded rationality in settlement process, settlement failure, traditional economic approach to understanding 361–4
asymmetric information models 362–4
behavioral law 361, 368, 371, 375–6
contingency fees 363
private information 363–4
screening and signaling models 362–3
Bovbjerg, R. 448, 480, 588
Bower, A. 372
Boyd, J. 225–6
Brenchman, E. 367
Breke, N. 368, 371
Brennan, T. 13, 33, 36, 41, 45, 46, 51, 55, 56, 58, 502, 522, 524, 588
Brickman, L. 383, 384, 388, 389, 393
Brody, H. 529, 538
Bronx effect, civil litigation 17
Brookshire, M. 466
Brown, J. 34, 36, 37, 93, 114, 172, 218, 370, 440
Brown, T. 526
Bruce, C. 473
Bruner, J. 366
Buchman, T. 372
Bull, J. 322
burdens of proof 305–29
Bayesian process 308, 309, 311, 312, 315–16, 320, 321
burden of persuasion 307–8
burden of production 308–9
definitions 307–10
future research 326–7
legal assumptions and presumptions 309
normative/positive spectrum 310–11, 327
procedural versus substantive rules 324–6
procedural versus substantive rules, bankruptcy situation 326
procedural versus substantive rules, ex ante behavior 325–6
standard of proof 308
see also settlement; trials
burdens of proof, modeling frameworks 311–24
decision-theoretic frameworks 311–16
decision-theoretic frameworks, shortcomings 315–16
game-theoretic frameworks 317–20, 325–6
game-theoretic frameworks, shortcomings 319–20
game-theoretic frameworks with sophisticated fact-finder 320–22
game-theoretic frameworks with sophisticated fact-finder, commitment condition and welfare costs 321–2
mechanism-design approaches 322–4, 327
mechanism-design approaches, direct revelation mechanisms 322–3
mechanism-design approaches, limitations 324
Burkett, G. 372
Burton, J. 183
Bustos, Á. 481
Butler, R. 183, 600, 601, 602
Cacioppo, J. 423
Cahill, M. 360
Cain, K. 11
Calabresi, G. 1, 97, 114, 152, 172, 185, 418, 440, 488, 493
Calfee, J. 38, 117, 158, 173, 177, 185, 441, 469, 480–81, 490–91
Camerer, C. 361, 365, 455
Canada
no-fault auto insurance 594, 595, 596, 597, 598
workers’ compensation insurance 599, 601
Cantril, H. 365
capped fees
contingent-fee contracts in litigation 389–90
see also fees
caps see damage caps
Card, D. 602
Cardi, W. 501, 541
Carney, W. 268, 349
Carpenter, C. 114
Carrier, E. 525
Carroll, S. 188, 281, 287, 288, 290, 291, 292, 293, 595–6, 596, 599
Carron, L. 182
Carson, R. 449
Carvell, D. 218, 221, 222, 223, 224, 225, 229
Casper, J. 420, 421, 423, 424, 430
Cather, C. 426
Caudill, S. 372
causation and foreseeability 114–48
adverterence, appropriate rate of 121–2, 123–4
breach of duty and cause in fact, relationship between 115–18
care level assessment 118–19
coincidental injury theory 119
durable and nondurable precautions 124–5
ex post versus ex ante approach 126–7, 133–4
inefficiency of negligent act 122–3
negligence law, reasons for causal limitations in 120–23
over-precaution avoidance and cause in fact 117–18
possible and clearly inefficient, distinction between 123, 129, 136
“possibly efficient” negligence 122, 129
proximate cause doctrines 120, 125, 145–6
reasonable care factor 119–20
reasonable-foresight doctrine, policy purposes 123–5
safety technology implications 125
Shavell’s theory of strict-liability causation, evaluation of 118–21
ultrahazardous risks 118, 119–20
uncontrollable movements, consideration of 121
“unique” accidents 127, 130–33
“unusual” accidents 129–30
causation and foreseeability, direct-consequences doctrine and contributory negligence 136–9, 140
corrective precaution 137, 138
intervening causes 138–9
no corrective precaution 136–7, 140
primary negligence 137–8
causation and foreseeability, direct-
consequences doctrine of proximate cause
139–45
dependent compliance error (liability) 143–5
effort encouraging free radicals (liability) 142–3
inadvertent negligence 142
independent intervening tort (no liability)
136–7, 138, 140–42, 144–5
no corrective precaution (no liability) 139–40
no intervening tort (liability) 145
policy purposes 145
causation and foreseeability, reasonable-
foresight doctrine of proximate cause
126–36
chain too complicated (no liability) 130–33, 134, 144
outside statutory risk (no liability) 134–6
reasonably foreseeable harm (liability) 136
scientists didn’t know (no liability) 133–4
untaken precaution as last link in causal
chain 127–30, 131, 132, 133, 134, 135, 142
causation in tort law 97–113
but-for causation 98, 99, 102–4, 109–10
classification of cases 98–100
ex ante versus ex post approach 107–12
factual causation 98, 101–3, 104
foreseeability 98, 99, 114–49
general proximate causation 99, 101, 104–7, 108
Hand Formula analysis 100–101, 103, 109, 116
incentives and alternative approaches, assessment of 103–7
negligence test 101–3, 104, 110–12
proximate causation 114–49
statutory standard of care 112
substantial factor test 102–3, 109
Ceniceros, R. 293
certification requirements, group litigation 265, 266, 267, 271–2
Chaiken, S. 423
champery, contingent-fee contracts 386–8
Chandra, A. 533, 535
Chang, H. 217, 228, 230
Che, Y.-K. 317, 331, 440, 462, 492
Chelius, J. 600
Cheney, F. 523
Cheng, C. 270
Chepke, L. 58, 384, 389, 408, 479, 521, 529
Cheung, R. 335, 349
Choi, A. 92, 317, 398
Choi, S. 270, 271, 288, 515, 520
Choi, W. 178, 186
Chou, C.-F. 537
Christensen, R. 316
Church, T. 21, 22
civil litigation 11–29
blockbuster awards 21, 25
Bronx effect 17
case types 16–17
compensatory and punitive damages, relation between 23, 25
disposition time 21–2
economics theory on tort system 12–13
fundamental flaws in system 13
general patterns 24–7
negligence liability and litigation levels 13
plaintiff awards 19–21
plaintiff awards, mean and median final awards, differences between 20–21, 24–5
reform measures, suggested 13–14
research data and methodology 15–16
research results 16–27
settlement data, lack of 14
settlement outcomes and win rates 18–19
theoretical and empirical background 12–14
tort filings 14, 15
tort trial outcomes, data on operation of 14
tried cases 14, 15
civil litigation, punitive damages 22–4
judge-jury differences 23–7
jurors’ role 23
models 25–7
Clark, A. 451
class actions
physical injury, automobile accidents 621
see also mass torts, socio-economics
Clermont, K. 15, 360, 398, 417, 422
Coase, R. 1
Coelho, L. 294
Coffee, J. 263, 265, 267, 268, 269, 271, 274, 288
Cohen, A. 178, 179, 181, 186, 541, 597
Cohen, G. 172, 178, 179
Cohen, L. 451
Cohen, T. 14, 15, 288, 330, 415, 421, 428, 525, 526, 541
Colby, T. 488
Coleman, J. 149, 152, 160, 161
collateral source rule 45, 55, 528, 537
Colpitts, J. 225
compensation
considerations, juries in tort cases 419, 426–7
hedonic damages 474–5
Index 637

no-fault accident compensation systems 508–607
and medical malpractice, 50–51
and punitive damages, relationship between 23, 25, 515–20
and unreasonable risks 154–6, 160
see also damages
contingent-fee contracts
bounded rationality in settlement process 363
and class actions 273
contingent-fee contracts in litigation 383–413
adverse selection models 399, 403, 404, 405
agency problems 394–407
alternative financing methods 390–93
and attorney behaviour 394–401
American Bar Association (ABA) Model Rules of Professional Conduct 383–4, 398
capped fees 389–90
deterrence and social welfare effects of attorney fees 402–4
empirical evidence 405–9
empirical evidence, experimental evidence 405–6
fee structures, implications of different 393–405
future research 410
law firm loans 392
magnitude and frequency 385–8
nature of 384–93
non-recourse loans 392
risk factors 390–93
settlement control, importance of 396–7
settlement frontier 395–6
tort reform 388–90
welfare enhancing aspects 391
contractual liability
and adverse selection 53–4
and collective goods 48–50
design, liability insurance, moral hazard 177–81
medical malpractice see medical malpractice, liability, economic analysis, contractual liability
pain and suffering awards 481
products liability see products liability, economic analysis, mandatory versus contractual liability
remedies, product liability 626
Cook, P. 174, 444, 592
Cooper, J. 424
Cooter, Robert 13, 35, 38, 45, 112, 117, 154, 161, 166, 173, 272, 322, 331, 345, 439–59, 489–90, 492, 497
corporate liability see economic policy and the vicarious liability of firms
Casper, C. 418
Cotton, S. 405–6
Cox, J. 266, 268, 270, 275
Crain, N. 556
Cranberg, L. 45, 523
Craswell, R. 38, 117, 165–6, 173, 177, 441, 490–91
Croley, S. 186, 468, 592
Cross, P. 365
Cuccia, A. 372
Cummins, J. 178, 597, 599
Curfman, G. 539
Currie, J. 39, 218, 220, 221–2, 223, 224, 225, 228–9, 331, 353, 531, 537
Currivan, J. 398
damages
choice between permanent and temporary, physical injury, liability and regulation as remedies 609
collateral source rule 45, 55, 528, 537
compensatory and punitive, relationship between 23, 25, 515–20
compensatory, and unreasonable risks 154–6, 160
consensual arrangements, product liability 627–8
hedonic see tort damages, empirical analysis, hedonic damages
and liability, separating decisions on, juries in tort cases 425–6
noneconomic 466–73
optimal damages, medical malpractice liability 40, 44, 45, 56, 57, 58
products liability 92, 93, 462, 470–71, 472
punitive see punitive damages restrictions, no-fault accident compensation systems 589, 591–2
tort see tort damages, empirical analysis
trends, tort damages 476–8
see also compensation; trials
damages caps
bounded rationality in settlement process 373–4
incompensable harms 448
insurance premiums, damage cap effects, medical malpractice 527–9, 535, 537
mandatory, punitive damages 519–20
medical malpractice and effect on awards, insurance premiums, recoveries, and patient safety 527–9, 535, 537
medical malpractice insurance premiums
see medical malpractice insurance premiums and
negative expected value (NEV) suits 352–3
noneconomic damages 479, 480, 481
pain and suffering awards 479, 480, 481
substitution effect, punitive damages 504
damages for incompensable harms 439–59
accidents, conventional economic analysis of 440–42, 451
damages caps 448
economic losses, compensation for 442–3
estimation methods 449–55
Hand Rule Damages (HRD) 439, 453–5
happiness equivalent (subjective well-being) 439, 451–3
incompensable losses, damages for 443–6
insurance effects 441–2
irreplacable goods, paradoxes of harm to 445–7
jury instructions 447–8
liability analysis 440–48
optimal damages 442
strict liability and negligence rules, distinction between 440–42
value of a statistical life (VSL) 439, 449–51, 454–5
Dana, D. 392
Dana, James 400, 403, 404
Dana, Jason 372
Daniels, S. 385, 415, 514
D’Arcy, S. 182
Dari-Mattiacci, G. 117
Daughtry, Andrew F. 69–96, 316, 318, 331, 344–5, 346, 401
Davis, J. 452
Dawson, D. 55
Dawson, E. 367
De Dreu, C. 373
DeAngelis, C. 538
Dee, J. 421
defendants
conditional offers and two defendants, joint and several liability, economic analysis, settlement 215
cost reduction, pain and suffering awards 480
credibility constraint, negative expected value (NEV) suits 352
insolvency, potential, with two defendants 214
joint and several liability settlement 216–17
standard model with two defendants and infinite solvency 206–14
wealth, effects of, punitive damages 497–8
see also plaintiffs
Dehejia, R. 541, 597
Del Rossi, A. 21, 486, 496, 500, 501, 515, 516, 518
Demougin, D. 322, 325, 326
DeNoon, D. 629
DePianto, David 439–59
Derrig, R. 178, 182, 598–9
deterrence
contractual liability, effect of 48–54, 90–4
effects, mass torts 296–7
as goal, group litigation 265–7
and insurance 462, 477, 478
joint and several liability see joint and several liability, economic analysis, deterrence effects
no-fault accident compensation systems 590–91, 593
optimal damages, medical malpractice liability 57–8
optimal deterrence theory, punitive damages 488–9, 501–2
pain and suffering awards 469–70
punitive damages and deterrence 461–2, 501–2
social welfare effects of attorney fees 402–4
and tort reform, punitive damages 520
under-deterrence risk, group litigation 266–7
Devlin, R. 597
Dew, K. 604
Dewees, D. 600, 624
Dhankhar, P. 526, 532
Di Tella, R. 452
Diamond, P. 114, 451
Diamond, Shari Seidman 414–35
Dick, J. 525
Dionne, G. 178, 182, 601
direct-consequences doctrine, and contributory negligence see causation and foreseeability, direct-consequences doctrine and contributory negligence
Ditto, P. 366, 367
Dixon, L. 293
Dobbin, K. 180
Dobbs, D. 154
Doherty, J. 293
Doidge, N. 475
Donohue, J. 15, 211, 215, 533, 535, 536, 562, 565, 579
Dopuch, N. 227
Doyle, A. 178
Drano, D. 530, 531
Drummond, R. 538
Dubay, L. 531
Dunning, D. 365
Durrance, C. 527
Dworkin, R. 150, 445

Eagly, A. 367, 423
Easterbrook, F. 205, 206, 216–17, 311
Eaton, T. 503, 514

economic loss
compensation for, damages for incompensable harms 442–3
tort damages, empirical analysis 463–6

Edgerton, H. 114
Egilman, D. 538
Ellingsen, T. 93
Ellington, C. 528, 529
Ellis, D. 489
Ellsworth, P. 429
Elwork, A. 429
Emmons, D. 554
Emons, W. 322, 400

empirical analysis
caps on premiums, predicted impacts, medical malpractice insurance premiums and damages caps 554–5
civil litigation 12–14
contingent-fee contracts in litigation 405–9
joint and several liability, economic analysis 227–30
juries in tort cases see juries in tort cases, empirical analysis of
medical error causes 40–41
punitive damages see punitive damages, economic analysis, empirical analysis
tort damages see tort damages, empirical analysis
tort reform, empirical effects see tort reform, empirical effects
Encinosa, W. 46, 521, 533, 535
Eppe, D. 93
Epstein, L. 376, 377
Epstein, Richard A. 37, 38, 45, 46, 47, 49, 52, 56, 57, 90, 185, 608–32
Erenburg, G. 264
Erichson, H. 263, 280, 288
Ericson, R. 178
Ermann, M. 424
Erus, B. 533, 535
European Union
consumer organizations in representative actions 271

contingency fee ban 274
group litigation, opt-in regimes 275
noneconomic damages for fatalities 472
see also individual countries
Evans, W. 447, 468, 470
evidence see burdens of proof
expert testimony, dealing with 422–4
see also juries in tort cases, empirical analysis of

Farber, H. 346, 523
Feder, B. 294
fees
contingent-fee contracts in litigation see contingent-fee contracts in litigation legal fees and expenses, mass torts 291–3
Feess, E. 216, 311, 312, 331
Feigenson, N. 418, 419, 428
Feldman, A. 153
Feldman, M. 420
Feldman, S. 152
Fenn, P. 341, 385, 391, 409
Ferrer-i-Carbonell, A. 452
financial crisis (1980s), effects of, liability insurance 187–8
Fisch, J. 271, 393
Fischoff, B. 371
Fishback, P. 599, 600, 623
Fisk, M. 292
Fitzpatrick, B. 272, 273
Fitzpatrick, S. 188
Fluet, C. 322, 325, 326
foreseeability
and causation see causation and foreseeability
causation in tort law 98, 99
intervention probability, causation in tort law 105–7, 108–9
positive economic analysis of tort law, fault lines in 160, 162
Fortin, B. 183
Fournier, G. 341
Fraises, M. 38–9, 531, 537
Frank, J. 115
Frank, R. 49
Frankel, A. 285
Frankel, M. 473
fraud cases, liability insurance, moral hazard 181–2
fraud-on-the-market (FOM) litigation 234–60, 264–5
Frey, B. 452
Friedman, Daniel 446

Index 639
Jennifer H. Arlen - 9781781006177
Downloaded from Elgar Online at 03/11/2019 01:37:39PM
via free access
Friedman, David 345
Friedman, E. 355
Friedman, G. 269
Friedman, M. 149–50, 165, 604
Froot, K. 172
Frost, S. 229
Furgeson, Joshua 360–82

Gabel, J. 170
Galanter, M. 14, 15, 360, 384, 477, 486, 495, 539
Gallagher, S. 170
game-theory models
  bounded rationality in settlement process, psychological approach and self-serving biases 375–7
  burdens of proof see under burdens of proof, modeling frameworks
Gandhi, T. 34, 40
Garber, S. 286, 289, 295, 385, 391, 392, 529
Garven, J. 172
Gaudry, M. 597
Gawande, A. 40, 56
Geistfeld, Mark A. 47, 90, 93, 149–68, 187, 439, 441, 448, 454, 481, 491
Germany, contingency fee ban 274, 385
Gershoff, A. 364
Gertner, R. 363
Gilles, M. 269
Gilles, S. 164, 183
Gimm, G. 530
Gius, M. 533, 535, 560, 564–5
Glantz, S. 538
Glenn, B. 178
Glied, S. 37
global settlements, mass torts 285, 287
Goerdt, J. 415
Goldberg, J. 69, 296
Goldberg, V. 172
Goldman, L. 518
goods see products
Gould, J. 336, 361
Grabowski, H. 396
Grace, M. 556, 562–3
Grady, Mark F. 97, 101–4, 107, 114–48, 177, 440, 623
Graham, D. 174, 444, 592
Graham, J. 527
Grant, D. 530
Green, L. 114
Greenberg, M. 521
Greene, E. 426
Greene, W. 561
Griffith, S. 170, 171, 178, 180
Gron, A. 188
Gross, S. 422
Grossman, J. 180
Grossman, S. 51, 80, 93
group litigation 262–78
  aggregate litigation 263, 271
  auctioning of representation right 271–2
  certification requirements 265, 266, 267, 271–2
class actions 263, 264, 266–70, 274–5
class' attorneys' fees, clear sailing agreements 267
class counsel monitoring 271–3
  compensation as goal 267–9
contingency fees and class actions 273
defense interest groups, over-deterrence claims 266
deterrence as goal 265–7
efficiency as goal 263–5
  filters to screen out inappropriate cases 264
  fraud-on-the-market theory 264–5
goals of 263–9
institutional investors as lead plaintiffs 270–71
multiple jurisdictions 267
predominance problem and issue class 265
representative actions 263, 269–73
securities law 264–5, 266, 268–9
settlement proceeds, allocation of 268
settlements 265
types of 263
under-deterrence risk 266–7
see also mass torts, socio-economics
group litigation, agency issues 269–75
counsel fees, setting 272
exit right 274–5
incentives 273–4
judicial review process 272
lodestar and percentage fees, differences between 273–4
monitoring 269–73
opt-in regimes 275
Grumbach, K. 533, 535
Grunebaum, A. 521, 529
Guinther, J. 415
Gunderson, E. 466
Guo, X. 183
Guthrie, C. 373, 426
Ha, Y.-W. 366
Haddock, D. 493–4
Hadfield, G. 327, 360
Hall, R. 463
Haltom, W. 513, 539
Hammitt, J. 426, 599
Hampton, J. 488
Hannaford, P. 417
Hans, V. 13, 415, 418, 421, 422, 423, 424, 425, 426, 525
Hansen, R. 272
Hanson, J. 186, 468, 592
happiness equivalent, damages for incompensable harms 439, 451–3
Harbacek, K. 428
Hardcastle, Lorian 551–87
Harrington, S. 183–4, 187, 188
Harris, C. 525–6
Hastie, R. 420, 429
Hastorf, A. 365
Hausman, J. 451
Havighurst, C. 36, 37, 46, 47, 52, 56, 59
Hawken, A. 178
Hay, B. 69, 266, 267, 331, 345, 354, 397–8, 405
Heaton, P. 598
Heifetz, A. 374
Heimer, C. 178
Heise, Michael 11–29, 360, 486, 496, 500, 503, 514, 515
Helland, Eric 15, 383–413, 470, 534, 598
Hellinger, F. 46, 521, 533, 535
Henderson, J. 539, 540
Hensler, Deborah R. 11, 279–302, 385
Hermer, L. 529, 538
Heuer, L. 416, 417, 422
Hilleges, S. 224–5
Hirsch, J. 281, 295
Hirschl, J. 317
Hirt, E. 367
Hitzhusen, M. 603
Ho, D. 533, 535, 536, 562, 565, 579
Hochberg, Y. 536
Hodges, C. 263, 285, 286
Hoffman, E. 365
Holloway, J. 215–16, 227
Holtz-Eakin, D. 45, 528
Horowitz, Jill 588
Horowitz, John 474
Horwich, B. 273
Howe, E. 427
Hoye, S. 523
Hoyt, R. 178
Hsiao, C. 565
Hsieh, C. 415, 426, 524
Hua, X. 82, 331
Huang, P. 452, 453
Huber, P. 11, 17, 289, 294, 424, 474, 629
Hurst, A. 524
Hylton, Keith N. 46, 47, 49, 97–113, 162, 274, 311, 492–3, 496, 497, 498
Hyman, D. 12, 19, 181, 188, 477, 504, 515, 528, 551, 553
Imbens, G. 562
incompensable harms, damages for see damages for incompensable harms
industrial accidents, consensual arrangements 621–3
see also accidents; physical injury, liability and regulation as remedies
Ingber, S. 439
Ingberman, D. 225–6, 227
Inglehart, R. 452
injury coincidental injury theory 119
irreparable injury problem 156–7
physical see physical injury
see also accidents; medical malpractice
insolvency problem see joint and several liability, economic analysis, deterrence effects, insolvency problem
institutional investors as lead plaintiffs, group litigation 270–71
insurance auto, no-fault accident compensation systems see no-fault accident compensation systems, auto insurance
claim filings, medical malpractice 527
costs, substantive content of tort rules 157–8
cover, mass torts 292–3
cover, pain and suffering awards 468, 469, 482
and deterrence 462, 477, 478
effects, damages for incompensable harms 441–2
health, and customary standard of care, medical malpractice liability 38–9
irreplacable goods, paradoxes of harm to 446–7
liability see liability insurance
effects, damages for incompensable harms 441–2
premiums, damage cap effects 527–9, 535, 537
premiums and medical malpractice see medical malpractice insurance premiums and damages caps
workers’ compensation, no-fault accident compensation systems see no-fault accident compensation systems, workers’ compensation insurance
Ireland, T. 473, 474
irreplacable goods, paradoxes of harm to
445–7
see also damages for incompensable harms
Israel, M. 178
Issacharoff, S. 267, 271
Ivkovich, S. 415
Jaffe, D. 184–5
Jaffe, L. 439
Jain, S. 366
Janssen, M. 93
Japan, mass litigation 286
Jensen, M. 269
Jesilow, P. 537
Johnson, A. 285
Johnson, E. 397
Johnson, H. 473
Johnson, J. 596
Johnson, M. 229
joint and several liability 199–233
empirical studies 227–30
enterprise liability 201
medical malpractice liability 55–9
negligence regime and apportionment rules
221–2, 224
observability of precaution on incentives,
importance of 222
optimal liability 200, 210–15, 220, 221, 223,
225, 226
production decisions and damages levels
220–21
proof problems 201
settlement effect 218–19
shareholder wealth changes 229–30
strict liability 219–21
tort reform 228–9, 531, 537
see also vicarious liability of firms
joint and several liability, insolvency problem
222–7
audit quality, effect of 224–5
endogenous solvency 225–7
exogenous solvency 223–5
incentive effects 223
legal regime, effects on scale of firm 226–7
non-financial models 225–6
joint and several liability, policy issues 202–5
claim reduction and choice of set-off rule
204–5, 213, 216–17
contribution right 203–4
contribution right, determination of shares
203–4
contribution right, and duty holders 204
joint and several liability, settlement 205–17
and allocable harm 215
auditor liability 215–16
conditional offers and two defendants 215
early models 205–6
empirical studies 227–8
and incomplete information 216
insolvency, potential, with two defendants
214
litigation costs, effects of 213
n-defendant case 216–17
pro tanto set-off rule 207, 209, 211, 213,
216–17, 219
screening model analysis 216
standard model with two defendants and
infinite solvency 206–14
unconditional/conditional set-off rules,
effects of 215
Jolls, C. 364, 455
Jovanovic, B. 80
judicial review process, group litigation, agency
issues 272
juries
judge–jury comparison 23–7, 417, 425,
502–3, 504–5
performance, medical malpractice 525–6
role, punitive damages 23
see also trials
juries’ instructions
and cost-benefit analysis 164
damages for incompensable harms 447–8
hedonic damages 474
pain and suffering awards 470, 480
juries in tort cases, empirical analysis of 414–35
archival research 415
attendance avoidance 418
comparable cases, information on 430
compensation considerations 419, 426–7
corporations, attitudes to, and “deep
pockets” hypothesis 424–5
deliberations, observation of 416–17,
420–21, 428–9
decision-making models 419–21
economic perspective 418
empirical study methods 414–19
experimental analysis 415–16
expert testimony, dealing with 422–4
interim statements 430
jury instructions, written copies of 430
jury size 429–30
liability and damages, separating decisions
on 425–6
liability decisions 421–2
Index

note taking 430
optimal jury trials, promotion and obstacles 429–30
post-trial reports 415
pretrial instructions on the law 430
psychological perspective 418–19
punitive damages, decisions on 427–8
“right” verdict, reaching 418, 419
role of juries 419–29
story model of decision-making 420
trial breaks and juror discussions 430
verdict pattern 421–2

Kachalia, A. 554, 559
Kahan, M. 38, 97, 101–4, 107, 150, 219, 221, 331, 460, 491
Kahneman, D. 364, 373, 375, 452
Kakalik, J. 591, 595–6
Kallapur, S. 229–30
Kalven, H. 416, 417, 422, 427
Kamin, K. 426
Kane, C. 554, 583, 585
Kantor, S. 599, 623
Kaplan, J. 45, 153, 308, 316, 327
Karpoff, J. 507, 515
Katz, A. 53, 331, 349, 350–51, 352, 401, 402
Katz, J. 416
Kavanaugh, K. 600
Keeton, R. 114
Kelley, P. 164
Kelly, E. 180
Kendall, B. 281
Kennedy, K. 371–2
Kerkmeester, H. 130
Kessler, Daniel 39, 362, 529–30, 532, 533, 535, 536, 554, 583, 585
Kessler, David 629
Kilgore, M. 560
Kim, B. 530, 537
Kim, J. 153
Kim, J.-Y. 216
King, G. 562
King, J. 448
Kingston, J. 280
Klayman, J. 366
Klee, E. 225, 226–7
Klein, B. 15, 18–19, 336, 343, 361–2
Klein, W. 367
Klement, A. 337, 348, 358
Klorman, D. 215, 331
Klick, J. 504, 533, 535
Klitzke, R. 613, 614
Kneuper, R. 178
Knez, M. 365
Kniesner, T. 601, 602
Knoll, M. 464
Kochanowski, P. 598
Koehler, J. 364
Koenig, T. 503, 514
Kohn, L. 118, 521
Koriat, A. 371
Kornhauser, Lewis A. 34, 56, 57, 177, 199–233, 234–60, 331
Korobkin, R. 37, 38, 373, 455
Koszegi, B. 375
Kraakman, Reinier 201, 234–61
Kraitchik, M. 315–16
Kraus, J. 150, 151, 161–2
Kritzer, H. 383, 385, 391, 393, 406–7
Kunda, Z. 365, 366, 367, 368, 370
Lahnstein, C. 170
Laibson, D. 375
Lakdawalla, D. 600
Lande, J. 424
Landeo, C. 363, 374
Landes, E. 597
Landes, W. I. 1, 70, 94, 97, 100–101, 103, 107, 114, 117, 153, 205–6, 216–18, 221–2, 336, 361, 402, 418, 440, 460
Lando, H. 326
Landrigan, C. 55, 521
Landsman, S. 417
Langevoort, D. 268
Langton, L. 14, 15, 288
Lanoie, P. 183
Lanvers, C. 330, 360
Larwood, L. 365
Lawthers, A. 525
lawyer bias 372–3
Lazear, V. 463
Leape, L. 40
Lee, C. 415
Lee, E. 263
Leebron, D. 448
Leeth, J. 601, 602
Lempert, R. 423
Lemstra, M. 598
Lerner, J. 364
Leslie, C. 227
Levery, T. 556, 562–3
Levin, N. 518
liability
analysis, damages for incompensable harms 440–48
and damages, separating decisions on, juries in tort cases 425–6
decisions, juries in tort cases 421–2
managed care organizations (MCOs) 55–6
Manzo, J. 416
Marco, A. 597
Marino, A. 82
“market for lemons” model, products liability 75–6
market sanctions, mass torts 294–5, 297, 299
market value, irreplacable goods 446
Marks, S. 97, 101–4, 107, 117
Marotta-Wurgler, F. 627
Martin, J. 385, 415, 514
Martinez, B. 295
mass torts, socio-economics 279–302
aggregation aspects 279–80, 288–9
attribution and blaming factors 287–8
class actions, differences between 279, 281, 283
collective management, need for 280–81
decline in litigation, alleged 285
future research 298–9
global settlements 285, 287
litigation amount and scope 282–6
outside US 285–6
plaintiff firms, portfolio strategy 288–9
predicting emergence of 286–7
socio-economic explanations 286–9
third-party financers 289
see also class actions; group litigation
mass torts, socio-economics, economic consequences 289–97
additional mass litigation 292
bankruptcy 293–4
deterrence effects 296–7
“diminished value” claims 292–3
direct costs 290–93
indirect costs 294–6
insurance cover 292–3
legal fees and expenses 291–3
litigation, future direct costs 295
market sanctions 294–5, 297, 299
product safety issues 294–5
regulatory agency failure 297, 299
securities class actions 292
settlement amounts 290–91
stock returns 295–6, 298–9
Matsa, D. 533, 535
Matthews, S. 80
Mayers, D. 171–2
Maynard, D. 416
Meckling, W. 269
medical malpractice 33–68
accidental nature of medical negligence 34–5
accidents, traditional economic model 36–9
claims resolution accuracy 46
collateral source rule 45, 55
damages caps 551–87
health insurance and customary standard of care 38–9
independent contractor rule 55–6, 59
joint and several liability 59
optimal damages 40, 44, 45, 56, 57, 58
optimal liability 37–8, 41–6, 47, 48–9, 50–51, 52–3, 54, 55, 56–8
patient safety investments 34–5, 39, 40–41, 43–5, 48–50, 57–8
physical injury, liability and regulation as remedies 611–12, 623–4
under-treatment when physicians bear the full cost of treatment 37, 38
and tort reform see tort reform, empirical effects, medical malpractice
medical malpractice and damages caps, estimation methods 559–65
and anticipated changes to tort law 563
controlling omitted variable bias 564–5
data employed 560–61
difference-in-differences (DID) models 565
formal model 65–8
generalizability 560–61
insurers’ delayed response to legal reforms 563
measurement error 561–3
model assumption violations 561–2
model and sample selection 559–60
observation levels 559–60
outliers, sensitivity to 563
time studies 560
tort reforms, coding 562–3
tort system, current problems 45–6
weighting observations 563
medical malpractice liability, contractual liability 46–54
collective goods problem 48–50
contracting over liability 36, 46, 47, 48–52, 54, 55
contracting through health insurers’ standard form contracts 52–4
contracting through health insurers’, standard form contracts, premiums higher than expected liability 53–4
inefficiency of informed individual contracting over liability 48–52
information problems 47
and informed rationality of patients 46–7
pre-contractual care, malpractice insurance and negotiation 50–52
medical malpractice liability, malpractice liability reform through hospital liability 55–9
deterrence, requirements for optimal 57–8
entity-level liability for harms caused by physicians 57–9
hospital administrator involvement 55
individual negligence liability 57–9
inefficiencies 55–6, 58–9
physician exhaustion 55
vicarious liability, traditional analysis 56–7

Melamed, A. 1, 488, 493
Mentzakis, E. 452
Merritt, D. 415
Messick, D. 365
Meyer, B. 601
Mezulis, A. 365
Miceli, T. 117, 220–21, 396, 401, 402
Milgrom, P. 80
Miller, A. 11, 13
Miller, Geoffrey 262–78, 280, 288, 363, 385, 393, 395, 396
Miller, H. 622
Miller, T. 449, 451
Mishan, E. 446
Mitchell, D. 390, 394, 397
Mitchell, R. 449
Mnookin, R. 346
Moller, E. 515
Molot, J. 272, 274
Moore, D. 372, 375, 376, 431
Moore, M. 541, 601
Mootz, F. 170
moral hazard
and attorney effort, contingent-fee contracts in litigation 397–9, 405, 406–7
liability insurance see liability insurance, moral hazard
see also risk
Morris, C. 127, 129
Morris, J. 538
Morrissey, M. 600
Moss, S. 452, 453
Mott, N. 427
Muehlheusser, G. 216, 331
Muller-Langer, F. 157
Mullin, C. 229
multiple defendants see economic policy and the vicarious liability of firms; group litigation; joint and several liability; mass torts, socio-economics
Murnighan, K. 365
Murphy, T. 292
Murray, B. 285, 292
Myerson, R. 362

Nadler, J. 420
Nagareda, R. 270, 273
Nalebuff, B. 340–41, 352
Narayan, V. 224
Neeman, Z. 337, 358
negative expected value (NEV) suits see settlement, law and economics, filing decisions and negative expected value (NEV) suits
negligence
contributory, and direct-consequences doctrine see causation and foreseeability, direct-consequences doctrine and contributory negligence
inefficiency of negligent act, causation and foreseeability 122–3
formal model of accidental negligence 65–8
law, reasons for causal limitations in 120–23
liability and litigation levels 13
liability for accidental negligence 39–45, 65–8
medical malpractice liability 33–68
regime and apportionment rules, joint and several liability, deterrence effects 221–2, 224
rule, entitlement structure 153–7
rule, liability insurance, classic model 176–7
strict liability and negligence rules, distinction between, damages for incompensable harms 440–42
system, comparative, automobile accidents 619
test, causation in tort law 101–3, 104, 110–12
Nelson, L. 528, 551, 554, 583, 585
Nelson, T. 367
Netherlands, collective settlement procedure 285–6
New Zealand, Injury Prevention, Rehabilitation, and Compensation Act 603–4
Newhouse, J. 54
Nickerson, R. 366
Nikitin, M. 363, 374
Nisbett, R. 368
no-fault accident compensation systems 588–607
damages restrictions 589, 591–2
future research 604
horizontal equity, need for 603–4
lessons from existing 602–3
overview 589
no-fault accident compensation systems, auto insurance 594–9, 603
choices 594

Jennifer H. Arlen - 9781781006177
Downloaded from Elgar Online at 03/11/2019 01:37:39PM
via free access
Index

compensation 595–7
cost savings 596–7
incentives 597–9
and increased accidents 597–8
over-claiming and exaggeration of injuries 598–9
tort system comparison 595–7, 598
no-fault accident compensation systems, tort theory 589–94
compensation 591–2
corrective justice 593–4
and deterrence 590–91, 593
economic rationales 590–91
incentives 592–3
lack of liability for costs 592–3
theoretical performance 591–4
no-fault accident compensation systems, workers’ compensation insurance 599–602, 603–4
claims reporting increase 601
compensation 600
experience-rating of firms, effects of 602
incentives 600–602
increased benefits and claim rates 600–601
injuries difficult to diagnose, and increase in claims 601–2
Monday effect 602
over-reporting severity of injuries 601
tort system comparison 600
Noah, L. 466
Nordman, E. 594
Nosal, E. 326
O’Connell, J. 480
Ogburn, P. 524, 525
Ohlander, J. 537
Ohsfeldt, R. 600
Olsen, W. 11, 14
Olszysnki, W. 598
Ondersma, C. 293
Osaka, E. 286
Ostrom, B. 330, 421, 424
Oswald, A. 439, 451, 452
Ott, C. 130
Pace, N. 265, 385, 528, 529, 591
Paik, M. 527, 530
pain and suffering awards see tort damages, empirical analysis, pain and suffering awards
Palmieri, P. 40
Pandya, S. 170
Parloff, R. 289
Pauly, M. 537, 592
Pearson, R. 115
Peeples, R. 523
Pennington, N. 420
Penrod, S. 416, 417, 422
Perino, M. 270
Perloff, J. 336
Peters, P. 39, 46, 331, 522, 525
Peterson, M. 281, 287, 500, 514
Peterson, R. 425
Petty, R. 368, 371, 423
Pfeifer, S. 281
physical injury and death, tort damages 461, 464–6, 467–73
physical injury, liability and regulation as remedies 608–32
asymmetric knowledge 609–10
consensual arrangements 621–30
damages, choice between permanent and temporary 609
detection prospects 610
human causes of damage, singular versus numerous 610, 611
individual versus group cases 610
industrial accidents, consensual arrangements 621–3
medical malpractice 611–12, 623–4
private and public regulation, optimal mix 609–10, 611
regulator and court efficiencies, importance of 610–11
solvency, importance of 610
worker unions, voluntary contracts 622–3
see also products liability
see also medical malpractice
see also mass torts
physical injury, automobile accidents 611, 617–21
class actions 621
highway networks, organization of 617
liability rules 619–20
licensing 618–19
negligence system, comparative 619
public and private remedies 618–20
tort and administrative remedies, integration of 620–21
violation excuses 620–21
physical injury, consensual arrangements, product liability 624–30
contract remedies 626
damages, reaching agreement on 627–8
drugs, harmful/beneficial effects 625–6, 629–30
federal preemption 629
manufacturing defects 626–7
regulation of product types 625
regulation and tort integration 628–30
standardized products 628–9
upstream/downstream responsibility, misallocation of 630
see also contractual liability
physical injury, harms to strangers
injunctive relief for threatened or repetitive harms 613
localized harms and private disputes 612–13
public and private systems, integration of 615–17
public regulation of nuisance and fires 614–15
strict liability rule 616–17
technology, cost effectiveness of 615
Picard, P. 178
Picus, L. 415, 423
Pischke, J.-S. 527, 535, 562
plaintiffs
awards 19–21, 24–5
choice, introduction of, contingent-fee contracts in litigation 400–401
firms, portfolio strategy, mass torts 288–9
institutional investors as lead plaintiffs, group litigation 270–71
see also defendants
P’ng, I. 315, 316, 354, 362
Pogarsky, G. 373–4
policy
implications, bounded rationality in settlement process 373–5
issues, joint and several liability see joint and several liability, economic analysis, legal structure and policy issues
purposes, direct-consequences doctrine of proximate cause 145
see also regulation
Polinsky, A. 34, 69–70, 75, 80, 90, 205–6, 294, 296–7, 315–17, 353, 397, 400, 440, 462, 490–92, 494, 496–7, 503–4, 507, 520, 628
Polsky, D. 534, 535, 562
Pomeroy, J. 156
Porat, A. 161, 446
positive economic analysis of tort law, fault lines in 149–68
autonomy-based tort rights 166
bilateral structure, history of 152–3, 156, 157
consistency and uniformity, need for 152–3
contract law 165–6
efficiency interpretation 150–52, 156–8
foreseeability 160, 162
liability structure 151–3
tort theory orientation 164–7
writ system, abolition of 153, 160
positive economic analysis of tort law, fault lines in, legal reasoning 161–4
cost-benefit analysis 163, 164
duty concept 162–3
jury instructions and cost-benefit analysis 164
reasonable care standard 163–4
positive economic analysis of tort law, fault lines in, substantive content of tort rules 153–61
compensatory damages and unreasonable risks 154–6, 160
efficient specification of duty 157–9
emotional harm 158–60
formulation of duty, current inefficient 159–61
Hand formula 155, 163–4
insurance costs 157–8
irreparable injury problem 156–7
negligence rule, entitlement structure of 153–7
Posner, R. 1, 12, 38, 70, 94, 97, 100–101, 103, 107, 114, 117, 151, 153, 163, 205–6, 216–18, 221–2, 336, 361, 402, 418, 440, 449, 451, 460, 474–5, 488
Postlewaite, A. 80
Potter, M. 366
Potter, W. 539
Powdthavee, N. 439, 452
Powell, B. 622
Prakash, S. 280, 295
Priest, G. 15, 18–19, 21, 186, 187, 336, 343, 361–2, 441, 600
primary behavior
effects, products liability 541–2
and settlement see settlement, law and economics, primary behavior
see also behavior
Prince, D. 296
private information
access, contingent-fee contracts 399–400
filing decisions and negative expected value (NEV) suits 351–2
post-sale, buyback costs 82
post-sale, products liability 80–83
settlement, existing claims 344–6
settlement failure, traditional economic approach to understanding 363–4
settlement, primary behavior 354–5
see also information
private and public regulation
integration of, physical injury, harms to strangers 615–17
physical injury, automobile accidents 618–20
physical injury, optimal mix 609–10, 611

see also regulation

products

closed product liability claims 470–71
damages awards 462, 470–71, 472
irreplaceable goods, paradoxes of harm to 445–7
liability and tort reform see tort reform, empirical effects, products liability
physical injury, liability and regulation as remedies see physical injury, liability and regulation as remedies, consensual arrangements, product liability
safety issues, mass torts 294–5
tort trials 16, 19, 20, 21, 22
products liability, economic analysis 69–96
care is unobservable to consumers and unverifiable to a court 75–6
damages awards 92, 93
firm has post-sale private information 80–83
informational differences 76–80
"market for lemons" model 75–6
misperceptions of product safety 75
optimal liability 73, 74, 75, 83, 86, 90–91
signaling methods 77–9, 80
products liability, investment in level of care 83–90
liability incentives and due care implications 88–90
socially-efficient versus equilibrium levels under oligopoly 88
two-period, two-firm model under strict liability 84–8
two-period, two-firm model under strict liability, business-stealing effect 87–8
products liability, liability regimes in idealized model, comparison 70–74
assumptions characterizing 70–71
duty-based liability 70
no liability 70
notation and formal model 71–3
strict liability 70
products liability, mandatory versus contractual liability 90–94
time inconsistency and absorbed liabilities 93
voluntary liability as signal of quality 92–3
Pronin, E. 371–2
proof
burdens of see burdens of proof
problems, joint and several liability 201
see also trials
property rule model, punitive damages 493–4
Prosser, W. 98, 114, 453
proximate cause doctrine
causation in tort law 98
duty concept in tort law 162–3
and foreseeability see under causation and foreseeability
psychological approach
juries in tort cases 418–19
and self-serving biases see bounded rationality in settlement process, psychological approach and self-serving biases
punitive damages
cap, and medical malpractice insurance premiums 578–9
civil litigation see civil litigation, punitive damages
and compensatory, relation between 23, 25
and deterrence 461–2
judge-jury differences 23–7
juries in tort cases 427–8
jurors’ role 23
and tort reform see tort reform, empirical effects, punitive damages
see also damages
punitive damages, economic analysis 486–510
defendant’s wealth, effects of 497–8
doctrine 494–8
economic goals 488–98
economic goals, theory 488–94
frequency of awards 486, 496–7, 500
future research 507
Hand formula 488, 489–90
hedonic damages and wrongful death 491
lower federal and state courts 498
magnitude of awards, effects of 486, 491–2, 495–6, 497, 500, 505–6
punitive–compensatory ratio 494–5, 497, 506
theoretical justifications 487
U.S. Supreme Court 495–8, 505–6
wrongful death damages 491–2
punitive damages, economic analysis of, deterrence
illicit gains and gain elimination 492–3, 496
loss internalization 489–92, 496–7, 498
optimal deterrence theory 488–9, 501–2
predictability, relationship to compensatory damages 500–501
and probability of detection 490–91
property rule model 493–4
wrongful takings prevention/ induce voluntary transfers 493–4
punitive damages, economic analysis, empirical analysis 499–506
caps, substitution effect of 504
deterrent effect 501–2
existing studies 499–505
frequency and size 500
judge versus jury 502–3, 504–5
mock juror studies 504–5
predictability, relationship to compensatory damages 500–501
shadow effect 503
U.S. Supreme Court’s misuse of empirical data 505–6

Rabin, M. 364, 375, 376, 377
Rabin, R. 163, 468–9
Rachlinski, J. 426
Radin, M. 445, 448
Rakos, R. 417
Rasmussen, R. 293
Raviv, A. 93
Rawls, J. 445
Raz, J. 445
Rea, S. 93, 592
reasonable-foresight doctrine of proximate cause see causation and foreseeability, reasonable-foresight doctrine of proximate cause
reform see tort reform
regulation
agency failure, mass torts 297, 299
court efficiencies, importance of, physical injury, liability and regulation as remedies 610–11
physical injury see physical injury, liability and regulation as remedies
private and public see private and public regulation
and tort integration, physical injury and product liability 628–30
see also policy; tort reform
Reid, K. 55
Reif, J. 563
Reinganum, Jennifer F. 69–96, 316, 318, 331, 342, 344, 345, 346, 363, 401
Resnik, J. 281
Revesz, R. 201, 204, 206–14, 215, 216, 218, 219, 220, 221, 222–3, 224, 227, 331
Rhein, E. 388
Rheingold, P. 281
Rice, J. 427, 472–3
Rickman, N. 341, 385, 391, 400, 409
Ridgway, D. 588
risk
aversion and demand, liability insurance 194–5
compensatory damages and unreasonable risks, positive economic analysis of tort law, fault lines in, substantive content of tort rules 154–6, 160
contingent-fee contracts in litigation 390–93
neutrality, without insurance (risk-neutrality), liability insurance, classic model 172–3
ultrahazardous risks, causation and foreseeability 118, 119–20
under-deterrence risk, group litigation 266–7
see also moral hazard
Ritov, I. 364, 386, 419, 431
Rizzo, M. 112
Robbennolt, J. 427
Roberts, K. 600
Roberts, M. 562
Robinson, C. 178, 179
Robinson, G. 37, 46, 47, 49, 624
Rock, S. 531
Rogers, J. 266
Rogerson, W 75
Rolph, J. 40, 595, 599
Rose, A. 275
Rose, M. 17, 418, 420
Rosenbaum, P 562, 565
Rosenberg, D. 266, 267–8, 275, 279, 347–8
Rosenblatt, R. 524
Rosenman, K. 600
Roth, A. 365
Rothman, K. 536
Rothschild, M. 92, 183, 186, 399
Roy, S. 93
Rubenstein, W. 272
Rubin, P. 46, 158, 185, 296, 481, 552, 553, 554
Rubinfeld, D. 325, 331, 345, 353, 397, 398, 399, 400, 406, 442
Ruser, J. 601, 602
Russell, R. 185
Rustad, M. 297, 514
Sage, W. 36, 45, 46, 51, 56, 59, 551
Saks, M. 424, 427, 430, 525
Salerno, Jessica M. 414–35
Sales, B. 429
Salinger, M. 311
Salvietti, C. 597
Sanchirico, C. 317, 318, 319, 322, 325, 326, 401, 402
Sanders, J. 415, 423, 425
Sandler, C. 293
Sanitioso, R. 367
Santore, R. 398–9, 405–6
Sappington, D. 325
Satterwaite, M. 362
Saxton, B. 429
Schäfer, H. 130
Schanzenbach, M. 392, 537, 552
Scherzer, T. 600
Schkade, D. 373
Schlanger, M. 475, 515
Schmidt, J. 595
Schrag, J. 346, 376, 377
Schuck, P. 289, 588
Schuster, M. 33
Schwab, S. 14, 15, 360
Schwartz, A. 90, 93, 446, 447
Schwartz, G. 187, 501, 542
Schwartz, M. 390, 394, 397
Schwartz, V. 473
Schwartz, W. 335, 346, 349, 351–2
Schweizer, U. 344–5
Scotchmer, S. 398, 399, 406
screening
model analysis, joint and several liability, economic analysis, settlement 216
settlement, and asymmetric information models 337–41, 344–5, 350
and signaling models, bounded rationality in settlement process 362–3
Seabury, Seth A. 383–413, 415, 477, 526
Seavey, W. 114, 120, 146
Sebok, A. 488
securities
class actions, mass torts 292
law, group litigation 264–5, 266, 268–9
Segerson, K. 220–21, 222, 224
Seligman, P. 15
Selvin, M. 415, 423
Sengupta, I. 600
Sentis, K. 365
Serkin, C. 442
settlement
amounts, mass torts 290–91
control, importance of, contingent-fee contracts 396–7
data, lack of, civil litigation 14
effect, joint and several liability, deterrence effects 218–19
frontier, contingent-fee contracts, attorney incentives 395–6
group litigation 265
joint and several liability see joint and several liability, economic analysis, settlement
outcomes and win rates, civil litigation 18–19
proceeds, allocation of, group litigation 268
process and bounded rationality see bounded rationality in settlement process
process, bounded rationality see bounded rationality in settlement process
prospects, bounded rationality in settlement process
process, psychological approach and self-serving biases 368–70
see also burdens of proof; trials
settlement, law and economics 330–59
existing claims, symmetric information models 332–6
existing claims, symmetric information models, endogenous trial timing 334–5, 336, 349, 350
future research 356
settlement, law and economics, existing claims, asymmetric information models 336–46
discovery and settlement 345–6
mutual optimism 336–7, 343
private information 344–6
robustness 344–5
screening 337–41, 344–5, 350
settlement probability assessment 338–41
signaling 341–3, 344–5
trial outcome implications 343–4
settlement, law and economics, filing decisions and negative expected value (NEV) suits 346–53
asymmetric information 349–53
damage caps 352–3
defendant’s credibility constraint 352
divisible litigation costs 348–9
legally compensable injuries 350–51
plaintiff’s expected value of going to trial 350
private information 351–2
settlement prior to discovery 352
symmetric information 347–9
settlement, law and economics, primary behavior 353–5, 356
asymmetric information 353–5
asymmetric information, and undermining of incentives for primary behavior 354
private information 354–5
symmetric information 353
several liability see joint and several liability
Severance, L. 429
sexual harassment cases 180
Shadish, W. 416
Shadle, J. 529–30, 552
shadow effect, punitive damages 503
Shainfield, A. 383
Shaked, A. 83, 335
Shannon, H. 600
shareholders
wealth changes and deterrence effects 229–30
see also wealth
Sharkey, Catherine M. 170, 486–510, 554, 558
Shavell, S. 1, 13, 33–4, 36–8, 43, 69, 70, 80, 90, 97, 100–101, 103, 107, 114–23, 129, 132, 136, 138–9, 141, 153–4, 157, 172–7,
Shepard, J. 45
Shepherd, J. 552, 554
Shiffman, S. 452
Shin, H. 322
Showalter, M. 534
Shukaitis, M. 398
Shuman, D. 423
Sieg, H. 363, 373, 409
Siegman, Peter 169–95
Sigman, H. 217, 228, 229, 230
signaling
products liability, firm knows level of safety prior to sale 77–9, 80
settlement, asymmetric information models 341–3, 344–5
Silver, C. 263, 266, 271, 273, 280, 288, 534, 535
Silverman, C. 473
Simon, D. 420
Simon, H. 364
Simon, J. 178
Singer, L. 268
Sinn, H.-W. 183, 184
Skaperdas, S. 317
Skogh, G. 172, 178
Skowronek, S. 152
Sloan, F. 45, 58, 384, 389, 408, 415, 426, 475, 479, 520, 521, 523, 524, 529–30, 531, 541, 552, 556, 560, 588
Sloan, R. 598
Slovic, P. 371
Smith, C. 171–2
Smith, E. 184
Smith Pryor, E. 448
Smith, R. 602
Smith, S. 473
Smith, T. 452
Smitha, M. 600
Smits, A. 536
Sykes, A. 34, 38, 46, 47, 52, 56, 57, 178, 201
Syverud, K. 178, 182
Tabarrok, A. 388, 389, 408–9
Tabbach, A. 117, 446
Tabler, R. 294
Takeda, K. 205, 217, 227
Talley, E. 305–9, 364, 374, 504–5
Taragin, M. 523
Taylor, R. 418
Taylor, S. 370
technology
cost effectiveness of, physical injury, harms to strangers 615
safety technology implications 125
Tehrani, A. 40
Tennyson, S. 178, 182, 599
Terry, H. 115

St-Michel, P. 601
Stafford, S. 229
Stapleton, J. 126
Steelman, D. 21
Stein, A. 39, 310
Stein, M. 622
Steinitz, M. 392
Stevenson, B. 439, 451
Stiglitz, J. 92, 183, 399
Stone, R. 542
Stratmann, T. 533, 535
strict liability
joint and several liability, deterrence effects 219–21
liability insurance, classic model 174–6
and negligence rules, distinction between 440–42
physical injury, harms to strangers, fire and nuisance 616–17
products liability, liability regimes in idealized model, comparison 70
see also liability
Studdert, D. 19, 33, 34, 40, 45, 46, 55, 58, 189, 331, 352, 360, 390, 391, 398, 422, 477, 520–21, 524, 554, 591
Stutzer, A. 452
substantive content of tort rules see positive economic analysis of tort law, fault lines in, substantive content of tort rules
Sugarman, P. 448, 472
Sunstein, C. 37, 46, 47, 419, 425, 428, 445, 449, 451, 452, 453, 474, 475, 504–5, 520, 538
Sutton, J. 83, 335
Svenson, O. 365
Swann, W. 366
Swazy, J. 542
Swedlof, R. 452
Sykes, A. 34, 38, 46, 47, 52, 56, 57, 178, 201
Syverud, K. 178, 182

Jennifer H. Arlen - 9781781006177
Downloaded from Elgar Online at 03/11/2019 01:37:39PM
via free access
Tetlock, P. 364, 444, 445  
Thakor, A. 269  
Thaler, R. 37, 46, 47  
Thomas, J. 552  
Thomas, R. 266, 268, 270, 272, 275  
Thomason, T. 407  
Thompson, A. 11  
Thompson, L. 365  
Thompson, R. 288  
Thorpe, K. 555, 556, 558, 563  
Thurston, N. 536–7  
Tidmarsh, J. 270  
Tiersma, P. 429  
Tkac, P. 229  
Tobias, C. 21

tort
  administrative remedies, integration of,  
  automobile accidents 620–21  
  filings, civil litigation 14, 15  
  law, causation in see causation in tort law  
  law, positive economic analysis see positive  
  economic analysis of tort law, fault lines in  
  reform measures, suggested 13–14  
  reforms, coding, medical malpractice  
  insurance premiums and damages caps  
  562–3  
  system, current problems, medical  
  malpractice liability 45–6  
  theory, no-fault accident compensation  
  systems see no-fault accident  
  compensation systems, tort theory  
  tort damages, empirical analysis 460–85  
  closed product liability claims 470–71  
  damages trends 476–8  
  damages trends, insurance policy limits 477,  
  478  
  economic basis 460–63  
  economic loss 463–6  
  emotional harms 466–7  
  injuries from market transaction 463  
  insurance and deterrence 462, 477, 478  
  interest rate determination 464, 465  
  litigation costs 462  
  monetary losses 460–61  
  noneconomic damages 466–73  
  noneconomic damages, damages caps 479,  
  480, 481  
  noneconomic damages, tort reforms 479–82  
  optimal damages 461  
  personal injuries and deaths 461, 464–6,  
  467–73  
  personal injuries and deaths, death bequests  
  469  
  pre- and post-trial losses 463–5  
punitive damages and deterrence 461–2  
time factors, consideration of 465  
  tort damages, empirical analysis, hedonic  
  damages 473–5  
  as compensation component 474–5  
  impermanence of disabilities 475  
  jury instructions 474  
  value of statistical life (VSL) 473–5  
  WTA-WTP measure 473–4  
  tort damages, empirical analysis, pain and  
  suffering awards 466–73  
  contractual approach 481  
  damages caps 479, 480, 481  
  defendant cost reduction 480  
  deterrence role 469–70  
  insurance cover 468, 469, 482  
  jury instructions 470, 480  
  “make whole” approach 468–9  
  nature rather than cause of injury approach  
  481  
  public valuations 481  
  schedules available to jurors 480  
  tort reforms 479–82  
  tradeoff potential 481  
tort reform
  anticipated changes, and medical malpractice  
  insurance premiums and damages caps,  
  estimation methods 563  
  collateral source rule 45, 55, 528, 537  
  contingent-fee contracts in litigation 388–90  
  contracting over liability, medical  
  malpractice liability 36, 46, 47, 48–52,  
  54, 55  
  damages caps see damages caps  
  empirical effects 513–50  
  joint and several liability, deterrence effects  
  228–9  
  see also regulation  
  tort reform, empirical effects, medical  
  malpractice 520–38  
  acute myocardial infarction (AMI) patients  
  532  
  claim patterns, verdicts, and awards over  
  time 526  
  collateral source rule 528, 537  
  damages caps, effect on awards, insurance  
  premiums, recoveries, and patient safety  
  527–9, 535, 537  
  filed and litigated claim outcomes 522–5  
  filed and litigated claim outcomes, and  
  misleading information 522, 526  
  frivolous lawsuits 521  
  health care spending, effects on 529–30  
  health insurance coverage, effects of 537  
  insurance claim filings 527
insurance premiums, damage cap effects 527–9, 535, 537
joint and several liability reform 531, 537
jury performance 525–6
lawsuit filings and socially constructed rankings of states 526–7
legal system performance 521–9
medical error and under-claiming 521
medical practice review panels, effects of 537
physician availability, liability effects 532–7
physician availability, methodological issues 535–6
physician behavior, effects on, obstetricians and gynaecologists 530–32, 536
physician behavior, effects on 530–32
physician education, need for 538
premium-driven behavior, concerns over 536–7
and quality of care 522, 523–4, 525
tort reform, empirical effects, products liability 538–42
corrupted science and socially constructed knowledge, problems with 538–40, 541
industry interests 539
legal system performance 540–41
primary behavior, effects on 541–2
and product quality 542
and safety 542
trial award amount trends 541
tort reform, empirical effects, punitive damages 513–20
blockbuster awards 515–16, 518–19
and compensatory damages, relationship between 515–20
damages caps, mandatory 519–20
decisions to award and award rates 514–15
and deterrence 520
punitive-compensatory ratio 516–20
punitive-compensatory ratio, no material change, implications of 520
Trebilcock, Michael 588–607
trials
claims resolution accuracy, medical malpractice 46
court efficiencies, importance of, physical injury, liability and regulation as remedies 610–11
filed and litigated claim outcomes, medical malpractice 522, 522–5, 526
outcome implications, settlement and asymmetric information models 343–4
settlement prospects, evidence of affecting likelihood of going to trial 369
see also burdens of proof; damages; juries; proof; settlement
Trieschmann, J. 601
Tullock, G. 317
Tunc, A. 170
Tussing, A. 531
Tversky, A. 373, 375
Tzankova, I. 285
Ubel, P. 452, 481
U.K.
contingency fees 274, 384–5
Doughty v. Turner Manufacturing Co. 133
group litigation 264
Group Litigation Order (GLO) 286
Jackson Report 385
Merryweather v. Nixan 203
Polenis 134
Powell v. Fall 615–16
Robinson v. Post Office 145
Vaughan v. Taff Vale Railway 615–16
Ulen, T. 441, 455
Ulph, A. 225
Urrutia, J. 596
U.S.
Class Action Fairness Act 267, 272–3
Clean Air Act 615, 617
Commonsense Product Liability Reform Act 519–20
Comprehensive Environmental Response Compensation and Liability Act (CERCLA) 200, 204, 206, 214, 217, 227, 228
Employment Retirement and Income Security Act (ERISA) 292
Food and Drug Administration (FDA) 297, 624, 626, 629
McDonald’s coffee case 11
Medical Care Availability and Reduction of Error Act 536
National Childhood Vaccine Injury Act 629
Private Securities Litigation Reform Act (PSLRA) 229, 270, 271, 288
Pure Food and Drug Act 624
Republican’s Contract With America policy initiatives 11
Resource Recovery and Responsibility Act (RCDA) 223
Restatement (First) of Torts 123
Restatement (Second) of Torts 109, 118, 119–20, 137, 159, 440, 627, 628
Restatement (Third) of Torts 122, 123, 126, 136, 151, 155, 159, 626, 627
Uniform Commercial Code 185–6
Uniform Comparative Fault Act (UCFA) 203, 204
Uniform Contribution Among Tortfeasors Act (UCATA) 203, 204

U.S., cases
Aguirre v. Adams 135
Amica Mutual Insurance Co. v. Town of Vestal 131, 132, 144
Anderson v. Katz 121
Anonymous (highway case) 620
asbestos litigation 293, 294
Bates v. State Bar of Arizona 287
Bendictin cases 422–3
Berry v. Borough of Sugar Notch 119, 126, 135, 141, 142
Betancourt v. Manhattan Ford Lincoln Mercury 145
Biakanja v. Irving 162
BMW v. Gore 494, 496, 497, 498, 506, 514, 515, 517
Burch v. Amsterdam Corp. 70
Campbell v. State Farm Mut. Auto. Ins. Co. 496
Campo v. Scefield 627
Central of Georgia Ry. v. Price 142
Charbonneau v. MacRury 620
Chase v. Washington Water Power Co. 132–3
Cipollone v. Liggett Group 163
City of Piqua v. Morris 111
Cooper Industries v. Leatherman Tool Group 495
Dalkon Shield litigation 290, 291, 293
Daubert v. Merrell-Dow Pharmaceuticals 422–3
Di Ponzio v. Riordan 135
Diaz v. Duke 121
Engalla v. Permanente Med. Group 624
Escola v. Coca Cola Bottling Co. 124
Exxon Shipping 23, 428, 494, 496–7, 505–6, 507, 514, 520
Faragher v. City of Boca Raton 180
Feng v. Metropolitan Transportation Authority 137–8
Flynn v. City of New York 122
Freeman v. Laventhol & Horwath 265
Geier v. American Am. Honda Motor Co. 629
Great Lakes Dredging & Dock Co. v. Sea Gull Operating Corp. 120
Grimshaw v. Ford Motor Co. 70
Guidant litigation 290, 291
Haft v. Lone Palm Hotel 123
Hairston v. Alexander Tank & Equipment Co. 144–5
Hammondtree v. Jenner 121, 620
Hastie v. Handeland 132
Henningsen v. Bloomfield Motors 626
Hines v. Morrow 127, 128, 129
Illinois v. Milwaukee 616
Int’l Paper Co. v. Ouellette 616
Jablonski v. Ford Motor Co. 124
Jacque v. Steenberg Homes 498
Johnson v. Kosmos Portland Cement Co. 129–30, 141
Jones v. Dressel 70
Jordan v. Adams 123
Kuchlik v. Feuer 139–40
Lone Star Industries v. Mays Towing Co. 138, 142
McDougald v. Garber 156
Madden v. Kaiser Found. Hosp. 624
Madison Ave. Gourmet Foods v. Finladia Ctr. 621
Mahone v. Birmingham Electric Co. 135
Markwell v. Swift & Co. 140
Marshall v. Nugent 98–9
Mathias v. Accor Economy Lodging 498, 507
Mathis v. Granger Brick & Tile Co. 141
Merck litigation 281, 292, 295, 297, 539
mesothelioma cases 287–8
Metro North Commuter Railroad v. Buckley 184
Microsoft v. i4i Ltd. P’ship 307, 308
Osborne v. McMasters 135
Owens-Illinois v. United Ins. Co. 184
Palsgraf v. Long Island R. R. 114, 120, 122, 123, 125, 128–9, 131, 141, 142, 157, 158, 159
Perkins v. Tex. & New Orleans Ry. Co. 100, 101, 103
Philip Morris USA v. Williams 494
Pittsburg Reduction Co. v. Horton 139–40, 141
Reyes v. Wyeth Laboratories 629
Riegel v. Medtronic 629
Rouleau v. Blotner 111
Rylands v. Fletcher 110, 613
Schaffer v. Weast 307
Seith v. Commonwealth Electric Co. 140–41, 143
Sheeley v. Memorial Hospital 551
Shoshone Coca Cola Bottling Co. v. Dolinsky 70
Silica Products Liability Litigation 181, 538
silicone gel breast implant litigation 288, 291, 293
Sindell v. Abbott Laboratories 201
Sinram v. Pennsylvania R. R. 140
Snyder v. Colorado Springs & Cripple Creek District Ry. 142
State Farm v. Campbell 494, 495–6, 497, 498, 506, 514, 515, 517–19
Steinhauser v. Hertz Corp. 132
Stone v. Bolton 99, 102
Summers v. Hertz Corp. 132
Taylor v. Beniss 388
Toyota litigation 281, 295, 297
Tunkl v. Regents of Univ. of Calif. 624
United Novelty Co. v. Daniels 130, 131, 133, 134
United States v. Carroll Towing 116, 453, 488
Vinturelli v. Kinney System Rent A Car 145
Vioxx litigation 281, 285, 290, 291, 292, 295, 297, 298, 539
Weirum v. RKO General 143
Wiener v. Southcoast Childcare Centers 144
Winship 314
Wyeth v. Levine 629, 630
Yukon Equip. v. Fireman’s Fund Ins. Co. 119
Zalunoff v. Walker 121
Zyprexa litigation 285, 290, 291
Utts, J. 316
Valentini, L. 225
value of statistical life (VSL)

damages for incompensable harms 439, 449–51, 454–5
hedonic damages 473–5
Van Boening, M. 363–4
Van Buskirk, A. 266
Van der Veer, N. 178
Van Praag, B. 452
Van, A. 399, 405
vicarious liability 234–60
independent contractor rule 55–6, 59, 234–60
medical malpractice liability reform through hospital liability 56–7
see also joint and several liability
see also products liability
Vidmar, N. 12, 17, 415, 419, 423, 427, 428, 448, 479, 505, 525, 526
Visscher, L. 130
Vladeck, D. 629
Voreacos, D. 285
Wagenaar, W. 373
Wagner, G. 263
Waldfogel, J. 344, 370
Walker, V. 273
Wang, G. 344
Wang, J. 178, 179
Ward, J. 473
Watanabe, Y. 336, 363, 373, 377, 409, 530, 531
Waters, N. 415
Watson, A. 613
Watson, J. 322
Watts, A. 223, 224, 400
Wazana, A. 372
wealth
constraints, agents’ see economic policy and the vicarious liability of firms, wealth
constraints, agents’
constraints, lack of see economic policy and the vicarious liability of firms, wealth
constraints, lack of
corporations, attitudes to, and “deep pockets” hypothesis 424–5
defendant’s wealth, effects of, punitive

damages, economic analysis of 497–8
see also shareholders
Weber, N. 541–2
Wegener, D. 368, 371
Weiler, P. 33, 34, 36, 40, 41, 45, 51, 55, 56, 57, 58, 59, 520, 521, 522, 524, 525
Weinrib, E. 152
Weinstein, N. 365
Weisberg, H. 178, 182
Weiss, E. 270
Welling, L. 82
Wells, M. 25, 496, 501, 516, 517, 535, 539
Wendt, L. 164
White, F. 537
White, G. 157
White, M. 346, 523, 541
Whittaker, W. 365
Wickelgren, Abraham L. 52, 91, 92, 186, 330–59, 361, 397
Wigmore, J. 309
Wilde, L. 93, 342, 363
Wilkinson-Ryan, T. 369, 374
Willging, T. 263
Williams, A. 55
Wilson, R. 346
Wilson, T. 368, 371
Winfield, P. 160
Winston-Ryan, T. 369, 374
Winter, R. 187, 307
Winton, A. 188
Wissler, R. 426–7, 481
Winterman, D. 136, 345, 609
Wojtowycz, M. 531
Wolters, J. 439, 451
Wooldridge, J. 561
Woolley, P. 270
worker unions, voluntary contracts, and physical injury 622–3
workers’ compensation (WC) insurance liability insurance, moral hazard 183
no-fault accident compensation systems see no-fault accident compensation systems, workers’ compensation insurance
Worrall, J. 600, 601
Wright, C. 309
Wright, R. 97, 112, 184
Xu, X. 534, 535
Yahya, M. 225
Yandle, B. 178
Yang, Y. 531, 532, 534, 535, 536, 552
Yarashus, V. 448
Yeh, J.-H. 595
Yoon, C. 188
Young, M. 598
Zador, P. 598
Zamir, E. 386
Zeckhauser, R. 49
Zeiler, Kathryn 38, 42, 46, 181, 188, 530, 551–87
Zeisel, H. 416, 417, 427
Zheng, B. 178, 179
Zipursky, B. 69, 296, 488
Zuckerman, S. 527, 555, 556, 560, 562, 563, 574
Zuehlke, T. 341