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Genetic risks, disclosure and foreseeable harm: An unanswered question after ABC v St George's Healthcare – *Michael Fay*

ABC v St George's Healthcare NHS Trust [2015] EWHC 1394 (QB) was a missed opportunity. The case was the first opportunity for the UK courts to engage with a duty to disclose genetic risks to patients' relatives, but Nicol J's judgment focused on whether a duty was fair, just and reasonable and ignored issues of harm and proximity. This article offers an answer to what the foreseeable harm, or gist damage, is in a claim of genetic non-disclosure. It considers intangible harms such as autonomy, dignity, and preparedness, but rejects these as formulations of harm as they fail to sufficiently recognise physical burdens of genetic conditions. This article also explores tangible harms drawn from existing principles of tort. Loss of a chance is discussed and rejected because of the difficulties of the "all or nothing approach" on a balance of probabilities. It is instead proposed that eventuating genetic conditions are the gist of the action, and an argument is put forward as to why it is not fatal to a negligence claim that defendants do not directly cause genetic diseases. 127

Contribution rights between tortfeasors – what is the "same damage"? – *Victoria Stace*

A recent New Zealand Supreme Court decision considered the issue of contribution between tortfeasors and the meaning of the words "same damage" in s 17(1)(c) of the Law Reform Act 1936 (NZ). By a majority of three to two, the court allowed a negligent director's claim for contribution against a negligent trustee to proceed. This article suggests that the reasoning of the minority is to be preferred. The loss that resulted from the negligent misstatement and the loss that resulted from negligent supervision of the issuer were not the "same damage". No clear law emerges from the decision on the issue at the heart of the dispute, namely, what is the loss for which the maker of a negligent misstatement is responsible? 145

The King can still do no wrong: A critical perspective on the Crown's private law duty of care in Canada – *Jasmine van Schouwen*

Through the study of failed toxic regulatory negligence cases, this article aims to deconstruct three myths surrounding the Canadian test for duty of care as it applies to Crown defendants: (1) the myth of the appropriateness of looking for a duty in statutes; (2) the myth of a need for interaction between the regulator and the plaintiff to counter the risk of indeterminate liability; and (3) the myth of conflicting duties, that is, that the idea that imposing a private duty of care on the part of regulators would conflict with their statutory public duties. The article concludes that the current Canadian test for establishing a regulator's duty of care, as applied by courts in toxic regulatory negligence cases, is deficient both on a logical and a practical level. This is because the test arguably contradicts well-established common law principles, seeks duties of care in sources where they are unlikely to be found, relies on unfounded concerns of indeterminate liability and the creation of conflicting duties of care, and disregards the principles that have already been established in jurisprudence for restricting the scope of regulator liability without eliminating it altogether 159

VOLUME 24 – 2016

Table of Authors 177

Table of Cases 179

Index 189