Demougin, Dominique; Fluet, Claude

Working Paper
Preponderance of Evidence

CESifo Working Paper, No. 725

Provided in Cooperation with:
Ifo Institute – Leibniz Institute for Economic Research at the University of Munich

Suggested Citation: Demougin, Dominique; Fluet, Claude (2002) : Preponderance of Evidence, CESifo Working Paper, No. 725

This Version is available at:
http://hdl.handle.net/10419/76016

Terms of use:
Documents in EconStor may be saved and copied for your personal and scholarly purposes.
You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.
If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.
PREPONDERANCE OF EVIDENCE

Dominique Demougin
Claude Fluet*

CESifo Working Paper No. 725 (2)

May 2002

Category 2: Public Choice

* This is a revised version of a paper circulated under the title “Preponderance of the Evidence: Tort Rules and the Efficient Standard of Proof”. We are grateful for the numerous useful comments received at various seminars and conferences. Particular thanks are extended to M. Boyer, C. Helm, C. Kirchner, E. Mackay, A. Miglo, F. Riedel, B. Schäfer, G. Thüsing. The usual disclaimer applies. Financing from FCAR (Quebec) is gratefully acknowledged.
PREPONDERANCE OF EVIDENCE

Abstract

This paper analyzes the incentive properties of the standard and burden of proof for a finding of negligence, when evidence is imperfect and rests with the parties. We show that the "preponderance of evidence" standard provides maximal incentives to exert care. This holds even though litigants may have unequal access to evidence and distort information. The optimal assignment of the burden of proof follows from the principle underlying the standard of proof. Our main results are derived in a mechanism design framework, but we also consider implementation as a sequential equilibrium with the court as a player in the game.

JEL Classification: D8, K4.

Keywords: negligence, standard of proof, tort rules, burden of proof, deterrence.

Dominique Demougin  
Humboldt Universität zu Berlin  
Spandauerstr. 1  
10178 Berlin  
Germany  
demougin@wiwi.hu-berlin.de

Claude Fluet  
Université du Québec à Montréal  
CP 8888 succ. Centre-Ville  
Montreal H3C 3P8  
Canada  
claude-denys.fluet@uqam.ca