

Working Papers

PREPONDERANCE OF EVIDENCE

Dominique Demougin
Claude Fluet*

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CESifo
Center for Economic Studies & Ifo Institute for Economic Research
Poschingerstr. 5, 81679 Munich, Germany
Phone: +49 (89) 9224-1410 - Fax: +49 (89) 9224-1409
e-mail: office@CESifo.de
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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
claud-denys.fluet@uqam.ca