

# 科學證據與侵權行為法： 美國有關邊得克汀訴訟的省思

簡資修

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本文是以在美國進行的有關邊得克汀訴訟為研究個案，說明科學證據與侵權行為法的關係。該藥劑的服用者與其生下的畸形兒，向法院提起民事訴訟，要求該藥劑的生產者負產品的損害賠償責任。訴訟系爭之點是，該藥劑與畸形兒之生成間的是否具因果關係。經過同儕審查而出版的流行病學研究顯示，其在統計上無顯著的關係，則與之衝突的未經同儕審查的所謂專家證言，是否具證據能力？另外，在涉及科學證據的訴訟，往往又是訴訟對立當事人間的財力有極大的差距，因而引發訴訟衡平的問題，又應如何解決？又在訴訟中，如果科學證據處理不當，造成是非不分，有何社會後果？最後，侵權訴訟程序是否終極解決科學爭執的適當場域？

**關鍵詞：**邊得克汀，證據能力，陪審團，科學證據，普遍接受原則，相對危險，信賴區間，公共利益訴訟，侵權行為法，流行病學

## 一、前言

民事賠償法制可說是美國近年來重大的公眾議題之一 (Litan & Winston 1988, Rabin 1989)。向法院提起侵權訴訟的案件，不但數量上大幅

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# **Law and Science: Some Lessons from the Litigation of Bendectin in U. S.**

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## **ABSTRACT**

Based on the litigation of bendectin, a drug prescribed for pregnant women, this paper explores the relationship between scientific evidence and tort law. In the litigation of bendectin, the case focused on whether infants born with deformities were a direct result of their mothers' taking bendectin during pregnancy. According to published and reviewed epidemiological data, the relationship between bendectin and deformed infants was not statistically significant. Consequently, the following questions are raised: Should courts balance equality and law in litigation involving scientific evidence? What are the social consequences if scientific evidence is purposefully misused? Are the courts the appropriate forum in which to resolve scientific disputes?

**Key Words:** Bendectin, inadmissible, torts, jury, general acceptance test, Daubert, Frye, relative risk, confidence interval, public interest litigation, scientific evidence.