

Abstract

This thesis deals with the responsibility associated with the provision of health care, specifically it deals with the problem of causal link in medical disputes, its peculiarities, its obstacles related to its proving and possible ways of burden-of-proof-easement in relation to causation, including in particular the loss of chance concept.

Second section of the thesis is dedicated to the brief introduction to the issue of liability, as a specific phenomenon necessary for the functioning of the human community, which is in the provision of health care represented not only by civil liability, but also by ethical disciplinary or labour liability. Legal liability is however clearly the dominant and most efficient instrument to regulate the conduct of the legal norm addressees.

Legal liability, defined as secondary legal obligation, arising as a result of a breach of the primary legal obligation, is described in the third section of this thesis according to its basic structural elements. These basic structural elements are: infringement, emergence of damage, fault and finally causal link between the unlawful conduct and the damage. Crucial attention is paid to the causal link, to the specification of the causal link concept, to the requirement for level of proof in the Czech legal system and also in comparison in the legal systems Germany and Austria.

The core issue of this thesis, issue of the level of proof that is imposed on the facts alleged by the plaintiff and foremost the issue of the possibilities and variations alleviating this burden of proof, are further analyzed in the fourth section of this thesis. Special attention is paid to the loss of chance concept, that is initially described by demonstrations on concrete cases adjudicated by British courts according to common law. Subsequently, the focus shifts to the central conflict of the loss of chance applicability – that is whether or not the loss of chance ought be treated as a damage in itself. The fourth section is then concerned with the analysis of various inspirational sources of burden of proof easement. These are probabilistic theory of causation, burden of definiteness, secondary burden of allegation, secondary burden of proof, factual presumption and free discretion of the court.

This thesis seeks to make a comprehensive overview of approaches to the level of the burden of proof imposed on the plaintiff, specifically patient-plaintiff, whether it is a concept used by foreign judicial decisional practice or rather doctrinal theory. Each of the outlined alternatives of the burden of proof easement is perceived critically and none is unreservedly preferred, however the undoubted remains that, the only truly improper and unsustainable attitude is the current Czech one, that is the attitude imposing the burden of proof upon the plaintiff with the level of „practical certainty”. This attitude needs to be reconsidered and adapted the principles of adequacy and fairness, what may reasonably be required.