

Diploma thesis - abstract

Due managerial care and diligence as a criterion for the determination of liability (a legal and comparative analysis)

Lucie Krtoušová

The purpose of this thesis is to critically analyse the interpretation of the concept of the due managerial care and diligence and consider the requirements that a director must comply with. The method used in this paper is the comparative analysis. As a basis of the comparative analysis it is chosen the British concept of fiduciary duties and duty of care, skill and diligence which is compared with the Czech concept of the care of a prudent manager.

The thesis is composed of five chapters, each of them dealing with different aspects of the concept of the due managerial care and diligence. Chapter One is introductory and defines basic terminology used in the thesis such as the director, the care of a prudent manager, the duty of loyalty, fiduciary duties and the duty of care, skill and diligence.

Chapter Two examines the British concept of fiduciary duties. The chapter consists of five parts. Part One focuses on introduction into the system of general duties of directors. Part Two explains the fiduciary position of a director. Part Three and Four address the two aspects of the duty of loyalty, i.e. the duty to act in the interest of the company and the duty to avoid conflicts of interest. Part Five focuses on the remedies provided in case of breach of the duty by a director.

Chapter Three is subdivided into three parts and provides an outline of the British concept of the duty of care skill and diligence. Part One illustrates the shift from the traditional to the modern understanding of the duty of care by the British courts. Part Two and Three deals with the content and combined standard of the duty of care.

Chapter Four concentrates on the Czech concept of the care of the prudent manager. It is subdivided into five parts and provides an analysis of the relevant statutory provisions according to the Commercial Code and New Civil Code and Act on Business Corporations. This chapter reviews the Czech academic discussions as to the care of the prudent manager and duty of loyalty.

The comparative analysis of the Czech and British concept the due managerial care and diligence is done in Chapter Five. It is focused on the similarities and differences of those two legal systems and aims to provide suggestions based on the British judicature for the Czech legislation on the edge of the recodification.

Key words:

Care of a prudent manager, duty of loyalty, duty of care skill and diligence, fiduciary duty.