

Loss of chance in Czech and English law

Abstract

This thesis focuses on the issue of the loss of chance doctrine. This doctrine enters the field of liability by creating a new type of loss. This new type of harm consists of the lost chance for a better outcome instead of the outcome itself. This thesis analyses English law and Czech law approaches to the loss of chance doctrine with main focus on the area of healthcare law. The thesis provides the reader also with the circumstances which formulate the relationship of both English and Czech courts to this doctrine and its use in the area of healthcare law. Both approaches to the loss of chance doctrine are also compared.

In this thesis analytical, research and comparative methods are used in order to provide a complex analysis of the issue and in order to answer the question of the possibility of using the loss of chance doctrine. Main focus is on the question of the use of the loss of chance doctrine within Czech law. The reached conclusion is that the doctrine can and should be used by Czech courts. This conclusion is supported by the interpretation of relevant Czech statute and by the argumentation based on the values of law and on the purpose of law. Within a debate the opinions towards the doctrine contained in the relevant caselaw and academic writings are critically evaluated. This evaluation has also been used in formulation of the conclusion of this thesis.

The thesis introduces the loss of chance doctrine and provides its own definition of this doctrine. Then it deals with English law and English background of the doctrine. The same analysis is used also in relation to Czech law. Both approaches are compared. Last part of the thesis consists of the debate which evaluate both caselaw and academic writing and formulates the grounds for the reached conclusion.

The thesis is intended to influence the academic debate and to help the courts to better understand the issue of the loss of chance doctrine. Due to the fact that the subject of the loss of chance doctrine is far from closed the thesis is also topical. It can be a relevant part of the academic debate especially because it offers an analysis of the original English doctrine and its comparison with the Czech approach.

Keywords

The loss of chance doctrine, medical liability, harm