

Medicine is a specific product, different from other products. To operate production, importing and selling medicines, including to take up of occupation in prescribing and distributing medicines are all dependent on the knowledge and expertise of the personnel concerned. Moreover, medicines are products essential to the life of human beings. Should medicines cause injuries, the injured will get appropriate fair remedy and compensation according to the law.

Studies have shown that, in foreign countries, injuries arising out of consumption of medicines can be recovered in civil cases, with consumers using the law of contract and the law of tort. In Thailand, injuries arising out of consumption of medicines are also recovered in civil cases in which the laws governing contract, sales and purchase, the law of tort and other special Acts have been applied but those laws are improper to apply for pharmaceutical product liability. Upon the law of contract, privity of contract between the plaintiff and the defendant is essential. Though the law of sales and purchase would stipulate that the seller shall take responsibility for defect of product, clear proof of such defect is difficult, especially in case the defect which the seller shall take responsibility must arise beforehand or while making the contract. The obstacle arising to remedy under law of tort is that the plaintiff has the burden to prove "fault" of the defendant which is difficult to do so. Especially, the Consumer Protection Act B.E. 2522 also uses the principle of the law of contract and the law of tort whereas the various Acts on Controlling of the Professions have no provision providing the injured with proper remedies in civil cases.

In order to provide the injured with efficient civil remedies for the injured as result of medicines both under the law of tort and the law of contract, it is essential to apply the law of strict liability in tort with the producers, importers and sellers of medicine, that is, the injured need not prove "fault" anymore and those dealing with prescribing and distributing medicines have to disprove presumption of fault as per provision related to malpractice and then take special remedial measures, namely, insurance, social security and fund pooling systems for use. The result is that producers, importers and sellers of medicines, including those prescribing and distributing medicine would conduct their duties more carefully. Besides, producers would produce medicines of better quality by passing on higher production costs to consumers through those special remedial measures. Finally, the whole system of production and consumption of medicines gain efficiency as far as medicine is an essential commodity for the life of human beings.