

Abstract

In this era, the software development technology is rapidly improved. A person is probably impossible to live without involving with facilities relating to or controlled by computer software, such as mobile phone, telecommunication system, accounting application software, computerized manufacturing process, software for banking, elevator, ambulance, medical instrument, train, aircraft, electronic system of vehicles, etc. If a process of software computer does not function properly, it may cause death, injury as well as loss and damages to property. Although, the Liability for Damages Arising from Unsafe Product Act of 2551 (B.E.) is in operation and regulating the application of the strict liability which reduce the damaged party's burden of proof, the Act, however, may unreasonably increase the burden of the entrepreneur in comparison with the provisions stipulated in the law of other jurisdictions, especially, the entrepreneur is unable to raise the fact that at the time of the injury incurred by the damaged party, the entrepreneur provided goods in accordance with the state of technological and scientific knowledge as of the date and/or was in compliance with industry or government standards at that time (state-of-the-art defense). Nevertheless, it is in doubt whether or not the Act is intentionally applied to the computer software.

The study found that legislations and judgments of both the United States and England have imposed the contractual approach, the negligence approach and the strict liability approach on liability for damages arising from the unsafe products. Besides, due to the special characteristic of the computer software which is different from the other generally industrial goods, the balance between the public policy on loss minimization and loss spreading arising from unsafe products and the possible effect to the costs of the software businesses would also be considered in the application of law. This thesis proposes a number of amendments of legislation as well as interpretations of the existing law, such as to apply the strict liability approach to certain types of computer software developed and distributed for mass marketing and commercial benefit, to adopt the state-of-the-art defense, etc.