

Abstract

The provision of Section 420 of the Civil and Commercial Code is a general provision of Thai tort law providing a right to claim damages for harm arising from the infringement of law. A plaintiff has a burden of proof that the defendant had been willfully or negligently and also the fact that infringement has caused damage to the plaintiff. If he can't prove it clearly or convincing the court to go along with him then he might lose in a court suit and didn't get a civil remedy. The important problem the tort law can not protect an injured person results from the principle of any party alleges any fact, the burden of proof lies on such party. By the way, the proof of intentionally or negligently act was hardly for plaintiff in some case. So providing the burden of proof to party who infringed a statutory provision and possessed the evidences should be more suitable and justice. And proving the defendant had been willfully or negligently in violation. The plaintiff might face with difficulty to prove or can't do it. By reason of cause of infringement might be aware of the only defendant party. Although, the plaintiff can prove the situation was happen but he can't prove how that situation has arisen. In addition to a kind of infringement in present day has been various and complicated than the past. It results to an injured person in the tort case didn't get a civil remedy.

The findings in this study in concept and intention to enacted the presumption of law in the provision of Section 422 of the Civil and Commercial Code, which was the presumption of fault, it was designed to protect the victim to relief the burden of proof. The author has studied and analyzed a statutory provision intended for the protection of others which embodied in Section 422 of the Civil and Commercial Code, a legislative intent has imposed a duty to act which appeared in the Civil and Commercial Code and the special provisions. The plaintiff mustn't prove that the defendant committed any act intentionally or negligently which the elements of the liability for wrongful act pursuant to Section 420. The plaintiff only explained a plaintiff indicated to the damage results from an infringement of a statutory provision intended

for the protection of others, it was enough to presume the person who infringed was fault. Then the plaintiff mustn't prove how the defendant committed any act intentionally or negligently. The proof of infringement and damages could be facilitated through statutory presumptions or the shifting of the burden of proof on the defendant. The exercise of the provision of Section 422 was applied in a few cases. Main obstacles are related to the legislator hadn't been recognized to an importance and benefit of this provision. The provision of Section 422 was applied in some adjudication as a separated provision from Section 420 that incorrect legislative intent. Apart from that, the exercise of the provision of Section 422 which only have the purpose of explaining the definitions of "unlawfully" for the purpose of the complete elements of the liability for wrongful act pursuant to Section 420 and they didn't consider to the provision which infringed was the statutory provision intended for the protection of others in Section 422. Include to the ambiguity of "a statutory provision intended for the protection of others" that causes to the legislator couldn't comprehend what kind of provision which was the statutory provision intended for the protection of others in Section 422 and regulated in which provision. It brought to a problem about interpreting the provision. The foregoing cause to the provision of Section 422 has been complicated to use in civil proceedings. So the presumption of fault in Section 422 couldn't really usage in civil proceedings.

From the study, the author thinks that a person enforcing in law, should recognize to an importance and benefit of applying a statute in case. To begin by emphasize to an importance of the provision of Section 422 when study law. Arising from the education of tort law scarcely emphasize importance of the provision of Section 422 which results seem to be abandoned in Thai law system. Actually the statutory provision intended for the protection of plaintiff as the presumption of fault which help plaintiff relief to burden of proof in tort case and reduce the stages and expenditures in civil proceedings. The provision of Section 422 stimulates to person has exercised proper care and performs to a statutory provision intended for the protection of others. As a result, society will be public order.