

從心肌梗塞案 談生存之相當程度可能性

Discussing the Possibility of Survival from
the Myocardial Infarction Case

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摘 要

現代型訴訟如醫療民事糾紛，其損害之結果往往涉及複數因素交織而成，且此類訴訟之證據資料多又偏在一方，導致證據資料取得不易，因果關係之認定更顯困難。日本司法實務有採取「相當程度可能性理論」，擴大侵權行為保護客體之範圍，藉由改變實體法上之待證事實，減輕訴訟法上之舉證責任，或可作為吾人於醫療民事訴訟時，認事用法之參考。

In modern litigation, such as medical civil lawsuits, the result of damage often involves the interweaving of plural factors. Besides, the evidence of such litigation is often biased towards one party, which makes the evidential data hard to obtain, and makes the causation more difficultly to

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Angle

determine. The legal practice in Japan adopts the “degree of possibility theory,” in order to expand the scope of protection object in tort. By changing the facts which to be proved in the substantive law to reduce the burden of proof in the procedural law. It may serve as a reference for us to confirm the facts and applies laws in medical civil litigation.

壹、案例

甲因胸口疼痛前往醫院就診，乙醫師於診療時未能察覺甲當時已有急性心肌梗塞症狀，僅給予點滴治療，嗣甲於留院觀察期間因心肌梗塞導致心臟衰竭死亡。事後鑑定結果認為，倘乙醫師於診療當時實施基本之心電圖檢查，確定為心肌梗塞並進行適切治療，甲仍有20%生存可能性。試問：家屬丙得否請求乙醫師賠償精神慰撫金？

貳、爭點

- 一、侵權行為保護客體與因果關係之認定。
- 二、日本法上之相當程度可能性理論。

參、解析

一、家屬丙可能得基於民法第194條規定請求乙醫師賠償精神慰撫金

所謂請求權基礎，係指民事法律上得以支持一方當事人向他方當事人有所主張之法律規範，請求權基礎之尋找為處理民法案例之核心工作。按民法常見之請求權基礎，計有：契約上