

Causation of Medical Malpractice: From the Case of Little Girl Chiou

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Abstract

In Taiwan, the criminal law is based on “adequate causation theory,” which is different from German’s “condition sine qua non” and “theory of objective attribution.” However, more and more court decisions are based on “potentials of avoidable results,” supplementing to adequacy theory. The tendency shakes up adequacy theory and moves towards the theory of objective attribution.

This study begins with the case of a little girl Chiou, examining the causation in cases of medical errors. Apart from examining theories of causation in criminal law in Taiwan, Germany, and Japan, this paper collects and compiles court decisions’ impacts on causation in cases of medical errors. Through comparison and dialogue between court decisions and criminal law theories, this paper presents a unique contour of relative causality in Taiwan.

Keywords: medical negligence, case of little girl Chiou, condition sine qua non, adequate causation theory, theory of objective attribution

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