

**Summary of the doctoral dissertation:**

**„Material damage and the conditions of its attribution concerning the abuse of trust.  
Dogmatic analysis from the viewpoint of case study”.**

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The dissertation represent dogmatic analysis of the concept of material damage as a feature of prohibited act and concerns the conditions of its application to the person, who manage the financial matters or business activity of another entity. Author aims to construct the model of criminal liability of agents, who inflicts material damage to their principal and to resolve interpretation issues, appearing in judiciary.

According to assumptions above, author used the dogmatic method in jurisprudence and empirical research, conducting case studies in 12 district courts and 4 circuit courts. The research includes examination of criminal proceedings, conducted for offences specified in article 296 of Polish penal code and, currently out of force, article 585 of Polish code of commercial companies. Author aimed to establish the character of relations between the interpretation of material damage in civil law, where it is used as the condition of compensation, and in the criminal law, where it is signified as a feature of prohibited act. This duality engage the question of the scope of autonomy in interpretation of criminal law, concerning terms intercepted from different branches of law.

The dissertation is divided into five chapters. The first chapter concerns the terms of damage and material damage in legal language, especially in the matter of civil law and in criminal law. Author argue that in criminal law we use the concept of damage in four different contexts, *inter alia* as the feature of prohibited act, and as a condition of imposing compensatory measures. As a consequence, there are some crucial differences in the interpretation of this term on the basis of criminal code itself.

The second chapter describes the analysis of the juridical structure of the features of the abuse of trust offence (article 296 § 1 – 4 of Polish criminal code). In particular, the consideration lead author to the conclusion, that the referral to the scope of authority and duties of manager does not constitute the regular, modal feature of prohibited act, but is a rarely used in criminal provisions pointing out code of conduct, binding agent acting in business trading.

The third chapter concerns the interpretation of material damage from the point of view of the abuse of trust offence. The conducted research lead to the following results. First,

the concept of material damage in criminal law, concerning the features of the abuse of trust offence, always has a normative component. Without referring to the breach of binding the code of conduct with the entrusted assets and without constructing the hypothetical, correct action, we cannot possibly identify the damage and estimate its value. Secondly, the material damage, perceived from the point of view of the financial interest of the business entity, is always a convention, assessment of possibilities of the enterprise to make a profit. As a consequence, to the needs of criminal law, author modifies the differential method of evaluating damage, used in civil law, by applying the test of consistent to the law alternative conduct, often used by the objective attribution of the result. Also, constructing the model of the attribution of damage to the perpetrator, author used commonly accepted in criminal law doctrine interpretation instruments, such as the concept of legal interest, the difference between exposing the interest to the danger and violating the interest and the objective attribution of the result. Author also refers to the rules of commercial law, pointing that the material damage valuation should take into consideration real economic significance and the meaning of legal or real act, as well as the principal's objective financial interest and the subjective economic plan of an agent.

By adopting foregoing point of view, author settles interpretation problems, which has been perceived it judiciary. The analysis concerns issues such as estimation of debts, loss of profit, acknowledgement of debt, the duty of paying the contractual penalties, public tributes. Large part of the analysis has been dedicated to the issues related to the time of doing a damage, and the explosion to a danger of material damage, which is the feature of prohibited act, included in article 296 § 1a of Polish criminal code. In this chapter author also concerns the defects of legal acts, issues related to the multiplication of conducts which provides to the damage, the quantifier used in criminal code as a description of damage ("substantial" material damage) and the significance of compensation for criminal liability.

The conducted case study shows, that the practice of justice system use either the civil law definition of damage and the autonomy of its interpretation in criminal law from case to case, which provides to incoherent and inconsistent decisions.

The fourth chapter concerns the instruments of the customization of criminal liability, that could be applied to the penalization of managerial behaviour. Author describes the conditions and circumstances, in which it is possible to not punish for inflicting the material damage to the principal, because of the consent of the interest holder to its violation. Also in this chapter author considers the issue of inflicting damage to the entity remaining as

a part of the group of companies, and applies the theory of the objective attribution of the result of prohibited act to the breach of trust offence.

The last, fifth chapter refer to different, procedural matter, which is the significance of the expert witness' opinion in the valuation of damage and it's attribution to the perpetrator of the breach of trust offence. Author describes the issue called "the communication risk", which arise from wrongful practice of constructing questions to the expert witnesses by using the terms such as "material damage", which have their very precise meaning in legal language, and also sounds familiar in the specialist language, in which the expert prepare the opinion. As a result, those different meanings of legal and economic or accountancy terms mix with each other, and sometimes courts transfer their procedural duties to the consulted experts. Considering this phenomenon, author expresses methods to counteract it.

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