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**The concept of the contribution of the aggrieved party and medical malpractice**

**­**− **comparative perspective**

This research concerns a comparative analysis of the concept of the contribution of the aggrieved party in relation to medical malpractice from the doctrinal and judicial perspective of the principles of mitigation of compensation in the Polish continental system, and the regulations underlying common law – American medical law.

Difficulties with proper balancing of the scope of responsibility in situations where the particular duties of prudent action are not explicitly indicated in legal provisions are particularly noticeable in case law. In many countries, including Poland, there is still no answer to the question of whether a victim who has suffered health damage has an obligation to limit it, and in particular to undergo proper treatment, or else it will determine his contribution. The reason for the many doctrinal divergences remains the uncertain issue of the nature of the charge - whether it is based on generally accepted care for their own interests, i.e. the principle of guilt or objectively inappropriate behavior, i.e. the principle of risk. A brief approach to the contribution of the injured party in art. 362 of the Civil Code contributed to the deepening of the heterogeneous jurisprudence line with prejudice to complex compensation cases in the field of medical law. There are also unprecedented, significant administrative aspects which are intended to be examined in terms of the impact of the conditions causing the contribution.

The aim of the research is to be as thorough as possible, thus it takes into account the historical and legal context, an interdisciplinary presentation of the problem from the proposed solutions of Polish civilian achievements in comparison with the American tort regime. However, it also aims to prove the thesis of previously unproduced public-law issues, i.e. Polish administrative responsibility. Both the contribution of the aggrieved party and the professional negligence of physicians constitute a link to damage being caused to health, entailing liability. However, the solutions adopted by the Polish legislator in comparison with the practiced American doctrine allow the indicated issues to be explored in a transparent manner.

The research methodology includes a dogmatic analysis that takes into account the achievements of Polish civil law doctrine and issues in the area of administrative responsibility. It was necessary to conduct an indepth review of Polish and American jurisprudence. The dogmatic analysis is based on the interpretation methods adopted in the doctrine: linguistic, systemic and functional. The work also includes extensive historical and, above all, comparative considerations. The aim of the comparative analysis is to compare the solutions adopted in particular states of the U.S. with doctrinal solutions dictated by American tort law and to assess their suitability for Polish case-law practice.

The research, using comparative statistics and drawing from the achievements of national and foreign doctrine and jurisprudence, will make it possible to professionally prove the research thesis, which sees a correlation of the indicated systems in terms of compensation solutions. The aim of research is therefore desirable with regard to heterogeneous case law practice to prove the legitimacy of the mutual implications of accepted practices deriving from the legacies of both legal systems.

**Key words:**

contribution of the aggrieved party, medical malpractice, medical law, Polish civil liability, administrative legal issues, American tort law, mitigation of compensation,