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Vorlesung
Osteuropäisches Recht III:
Zivilrecht im Ostseeraum

SS 2017

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20.04.2017 Grundstrukturen der Zivilrechtssysteme im Ostseeraum

27.04.2017 Allgemeiner Teil des Bürgerlichen Rechts

04.05.2017 Schuldrecht Allgemeiner Teil

11.05.2017 Kaufrecht

18.05.2017 Eigentum und andere dingliche Rechte

25.05.2017 *Feiertag*

01.06.2017 Delikts- und Schadensrecht

08.06.2017 Vorlesung entfällt wegen anderer Verpflichtung

15.06.2017 Handels- und Gesellschaftsrecht

22.06.2017 Familienrecht

29.06.2017 Erbrecht

06.07.2017 Zivilprozessrecht und Schiedsgerichtsbarkeit

13.07.2017 Insolvenzrecht

20.07.2017 Internationales Privatrecht

Begriff des Deliktsrechts und des Schadensrechts

- Deliktsrecht: Teilbereich des Haftungsrechts (neben insbes. vertraglicher Haftung)
- Schadensrecht: bestimmt über Art und Umfang des Schadensersatz, kann allgemein oder bereichsspezifisch geregelt sein

Inhalte des Deliktsrechts

- Haftungsvoraussetzungen im Grundfall (1 Schädiger – 1 Geschädigter)
- Generalklausel – Kombination von Generalklauseln – Regelungen über EinzelTBs
- Diff. Verschuldenshaftung – Gefährdungshaftung
- Haftungsvorr im einzelnen, z.B. Schädigung, Kausalität, Verschulden, Ausschlussgründe der Haftung etc.
- In welchen Lebensbereichen bestehen Sonderregelungen?
- Haftungsvoraussetzungen bei Mehrzahl von Beteiligten (Schädiger und/od. Geschädigte)
- Bezug zu Versicherung

Inhalte des Schadensrechts

- Einheitl. Regelung für das gesamte HaftungsR oder getrennte Regelungen oder Kombinationen
- Totalreparation od. Haftungsbegrenzungen od. Kombinationen
- Naturalrestitution od. Geldersatz od. Kombinationen
- Sonderthemen:
 - Haftungsausfüllende Kausalität: Differenztheorie, Adäquanztheorie, andere Begrenzungen wie zB Schutzzweck
 - Vermögensschäden – Nichtvermögensschäden
 - Schäden bei Dritten
 - Haftungsmilderungen bzw. Herabsetzungen
 - Möglichkeit Schadensschätzung im ZivilprozessR?

Rechtsquellen des Delikts- und Schadensrechts im Ostseeraum

Gibt es in den Rechtsordnungen des Ostseeraums Gesamtregelungen zum DeliktsR und SchadenR? Gibt es Sondergesetze?

- **Deutschland:** BGB regelt sowohl DeliktsR als auch SchadensR, aber getrennt, daneben Spezialgesetze insbes. zu Gefährdungshaftung (zB ProdukthaftungsG [*beruht auf EU-Richtlinie*], StVG, AtomG, ArzneimittelG, UmwHG etc.)
- **Nordeuropäische Rechtsordnungen:** Schweden und Finnland haben allgemeine weitgehend identische Schadensersatzgesetze, die sowohl HaftungsR als auch SchadensR regeln (von 1972 und 1974), in Dänemark dagegen ist das DeliktsR weitgehend GewohnheitsR (aber einige Spezialgesetze wie der Danish Road Traffic Act 1976), aber das SchadensR ist teilkodifiziert (Personen- und Sachschäden) im Danish Liability for Damages Act 2005.
- **Baltikum:** Estland ja (im ObligationenrechtsG), Litauen ja (ZGB), Lettland ja (BGB). Daneben auch Spezialgesetze.
- **Polen:** ja (ZGB und Spezialgesetze)
- **Russland:** ja (ZGB und Spezialgesetze)
- **Sonderthemen?** Bezug zum VersicherungsR, spezifisch insbes. in Nordeuropa

NB: Unofficial translation

Finnland

Tort Liability Act

(412/1974)

Chapter 1 — Scope of application

Section 1

This Act applies to liability for damages. However, unless otherwise provided in this or another Act, this Act does not apply to liability for damages under contract or as provided in another Act.

Chapter 2 — Liability of the person causing injury or damage

Section 1

(1) A person who deliberately or negligently causes injury or damage to another shall be liable for damages, unless otherwise follows from the provisions of this Act.

Regelungen zum Haftungs- und Schadensrecht. Beispiel Finnland

Tort Liability Act Finland (1974)

- Chapter 1 — Scope of application
- **Chapter 2 — Liability of the person causing injury or damage**
- Chapter 3 — Vicarious liability of employers and public corporations
- Chapter 4 — Liability of employees and public officials
- **Chapter 5 — Damages**
- Chapter 6 — Allocation of liability
- Chapter 7 — Miscellaneous provisions

Sale of Goods Act (355/1987)

- Chapter 1— General provisions
- Scope of application
- Chapter 4— Conformity of the goods
- Chapter 5— Consequences of delay in delivery
- **Sec.27 Damages**
- Chapter 10— Consequences of buyer's breach of contract
- **Sec.57 Damages**
- **Chapter 13— Measure of damages**

Environmental Damage Compensation Act Finland of 1994
Environmental Damage Insurance Act Finland of 1998

S. auch Motor Traffic Damage Act Sweden 1975

Regelungen zum Haftungs- und Schadensrecht. Beispiele Polen und Estland (mit Bezug zu D u RF)

Poln. ZGB 1964 ff

- Erstes Buch: Allg. Teil: dort Art.23, 24 persönl. Rechtsgüter
- Drittes Buch: Schuldverhältnisse
- Titel I: Allg. Vorschriften: dort Art.361 – 363 zum SchadensR
- Titel VI: Unerlaubte Handlungen (im SchuldR AT!), Art.415 – 449
- Titel VIa: Produkthaftung, Art.449/1 – 449/11

Estn. ObligationenrechtsG 2001

- **Part 1 GENERAL PART**
- Chapter 1 GENERAL PROVISIONS, dort Ansprüche auf SEA allg. angesprochen (§ 3 Ziff.2)
- **Chapter 5 NON-PERFORMANCE**
- § 101 Ziff.3 allg. Vorschrift über SEA bei Pflichtverletzung, § 104 culpa-Erfordernis
- § 115 allg. Vorschrift über SEA in Schuldbeziehungen [ähnl. wie § 280 dt. BGB]
- **Chapter 7 COMPENSATION FOR DAMAGE, §§ 127 – 140**
- **Chapter 53 UNLAWFUL CAUSING OF DAMAGE, §§ 1043 - 1067**

Zum Vergleich: dt. BGB 1900 ff

- Erstes Buch: Allg. Teil: dort § 12 Namensrecht
- Zweites Buch: Schuldverhältnisse
- Abschnitt 1: Inhalt der Schuldverhältnisse
- Titel I: Verpflichtung zur Leistung, dort §§ 249 – 255 SchadensR
- Abschnitt 8: Einzelne Schuldverhältnisse
- Titel 27: Unerlaubte Handlungen (§§ 823 – 853)

Zum Vergleich: russ. ZGB Teile 1 u 2 (1994/1996 ff)

- Teil 1: Erstes Buch: Allg. Teil: dort Art.15 SchadensR, Art.151 – 15/2 Ersatz immat. Schäden, Schutz der Ehre u des Bildes
- Teil III: SchuldR-AT, dort Kap.25 Haftung für Verletzung einer Verpflichtung, Art.393 - 406
- Teil 2: Abschnitt IV: Einzelne Schuldverhältnisse, dort Kap.59 Unerlaubte Handlungen (Art.1064 - 1101)

Regelungen zum DeliktsR. Beispiele Estland und Lettland

Estn. ObligationenRG 2001

Chapter 53 UNLAWFUL CAUSING OF DAMAGE

Division 1 General Provisions

- § 1043 Compensation for unlawfully caused damage
- § 1044 Claims filed on other basis
- § 1045 Unlawfulness of causing of damage
- § 1046 Unlawfulness of damaging personality rights
- § 1047 Unlawfulness of disclosure of incorrect information
- § 1048 Unlawfulness of incorrect opinion of expert
- § 1049 Unlawfulness of halting of economic or professional activities
- § 1050 Culpability as basis for liability
- § 1051 Prohibition on preclusion or restriction of liability
- § 1052 Restrictions on liability
- § 1053 Liability for damage caused by children and persons placed under curatorship
- § 1054 Liability for violation committed by other person
- § 1055 Prohibition on performance of damaging acts

Division 2 Liability for Damage Caused by Major Source of Danger, § 1056 – 1060

Division 3 Liability for Defective Product, § 1061-1067

• Lett. BGB 1937

- **CHAPTER 19: Claims on Various Grounds**
- SUB-CHAPTER 1: Claims Due to Private Delicts
- I. Compensation for Bodily Injuries, §§ 2347-2351
- II. Right to Compensation for Offences against Personal Freedom, Reputation, Dignity and Chastity of Women, §§ 2352-2353
- SUB-CHAPTER 2: Claims Due to Illegal Damage of Property, §§ 2354-2357
- SUB-CHAPTER 3: Compensation for Losses Caused by Throwing, Pouring or Falling, §§ 2358-2362
- SUB-CHAPTER 4: Compensation for Losses Caused by Animals, §§ 2363-2368
- SUB-CHAPTER 5: Claims Arising from Unjust Enrichment, §§ 2369 et seq.

Haftungsvoraussetzungen im Deliktsrecht – Perspektive Ostseeraum (Grundfall: 1 Schädiger – 1 Geschädigter)

- Verschuldensprinzip als Grundsatz
- Gefährdungshaftung als Ausnahme
- Delikt. Generalklausel - Delikt. EinzelTBe - Kombinationen
- Einzelne Haftungsvorr bei Verschuldenshaftung
- Schädigung (Schaden) – Rechtsgutsverletzung?
- Kausalität
- Verschulden: wie definiert?
- „Rechtswidrigkeit“?
- Haftungsausschlüsse oder –minderungen?

Deliktische Generalklausel oder EinzelTBe oder Kombinationen

- **Dt. BGB: §§ 823 – 826**

- **Lett. BGB:**

SUB-CHAPTER 1: Claims Due to Private Delicts

I. Compensation for Bodily Injuries

2347. If a person inflicts a bodily injury upon another person through an action for which he or she is at fault and which is illegal, the first-mentioned person shall compensate the other person for medical treatment expenses and, apart therefrom and pursuant to the discretion of a court, also for potential lost income, and remuneration (material compensation) for moral injury.

II. Right to Compensation for Offences against Personal Freedom, Reputation, Dignity and Chastity of Women

2352. If a person unlawfully deprives another person of his or her personal freedom, the first-mentioned person shall restore the other person's freedom and provide, in accordance with the discretion of a court, full compensation also for moral injury [22 December 1992]

SUB-CHAPTER 2: Claims Due to Illegal Damage of Property

2354. The provisions of Sections 1776 -1792 shall be applied to claims regarding illegal damage of property.

- **Poln. ZGB 1964**

§ 415 Wer einem anderen schuldhaft einen Schaden zugefügt hat, ist zum Schadensersatz verpflichtet.

- **Estland: ObligationenRG 2001**

§ 1043. Compensation for unlawfully caused damage

A person (tortfeasor) who unlawfully causes damage to another person (victim) shall compensate for the damage if the tortfeasor is culpable of causing the damage or is liable for causing the damage pursuant to law.

- **Lit. ZGB 2000**

Article 6.245. Concept and kinds of civil liability

2. Civil liability is of two kinds: contractual liability and non-contractual (delictual) liability.

3. Contractual liability is a pecuniary obligation resulting from a failure to perform a contract ...

4. Non-contractual (delictual) liability is a pecuniary obligation which is not related with contractual relations, except in cases where it is established by laws that delictual liability shall also result from damage related with contractual relations.

- **Russ. ZGB (Teil 2) 1996**

Paragraph 3. Compensation for Harm Caused in Consequence of Defects in Goods, Works or Services

Article 1095. Grounds for Compensation for Harm Caused in Consequence of Defects in Goods, Works or Services

The harm caused to a citizen's life, health or property or to property of a legal person in consequence of defects ... defects of goods, ... shall be subject to compensation ... irrespective of ... whether or not the victim had contractual relations with them.

- **Finnland: SchadensersatzG 1974**

Chapter 2 — Liability of the person causing injury or damage
Section 1

(1) A person who deliberately or negligently causes injury or damage to another shall be liable for damages, unless otherwise follows from the provisions of this Act.

- **Dän. SchadensersatzG (Danish Liability for Damages Act) 2005**

Part 2 Liability in damages for losses covered by insurance

§ 19. (1) In so far as a loss is covered by property insurance or consequential loss insurance there shall be no liability in damages.

(2) The rule in section 1 shall not apply if:

the party liable in damages caused the loss wilfully or through gross negligence, or the loss was caused in the performance of public or commercial enterprise or enterprise that can be equated therewith.

§ 22. (1) If there is liability in damages for a loss covered by general insurance, the insurance company shall be subrogated to the injured person's rights against the party liable in damages to the extent that it has paid compensation.

(2) In the case of life, accident or health insurance or other personal insurance, the company shall have no claim against the party liable in damages irrespective of the nature of the insurance.

- **Russ. ZGB (Teil 2) 1996**

Article 1072. Compensation for Harm by Person Who Has Insured his Responsibility

A legal person or a citizen who has insured his responsibility in a voluntary or obligatory insurance procedure for the benefit of the victim (Articles 931, 935[1]) in the event that the insurance indemnity is insufficient in order to fully compensate for the harm caused, shall compensate the difference between the insurance indemnity and actual size of damage.

Grundregeln des Schadensrechts – Perspektive Ostseeraum

- Totalrestitution oder Begrenzung des Umfangs des SEA. Herabsetzung im Einzelfall?
- Naturalrestitution oder Geldersatz
- Welche Schäden sind ersatzfähig?
- Personenschäden, Schäden am Eigentum, Vermögensschäden (Sonderfall entgangener Gewinn), immaterielle Schäden
- Schädigung Dritter erstattungsfähig
- Bezug zur Versicherung

Themen aus dem DeliktsR zum Vergleich

- **Thema 1: Anwendungsbereich des DeliktsR und Verhältnis zu anderen Rechtsgebieten, z.B. VertragsR**
- **Thema 2: Haftungsvoraussetzungen bei Verschuldenshaftung**
- **Thema 3: Haftung für Drittpersonen**
- **(Thema 4: Gefährdungshaftung)**

Thema 1: Anwendungsbereich des DeliktsR u. Verhältnis zu anderen Rechtsgebieten

- **Dt. BGB, lett. BGB:** keine ausdrücl. Regelung
- **Poln. ZGB 1964**

§ 443 Der Umstand, dass die Handlung oder Unterlassung, aus der der Schaden entstanden ist, gleichzeitig die Nichterfüllung oder Schlechterfüllung einer vorher bestehenden Verpflichtung gebildet haben, schließt den Schadensersatzanspruch auf Grund unerlaubter Handlung nicht aus, es sei denn, dass sich aus dem Inhalt der vorher bestehenden Verpflichtung etwas anderes ergibt.

- **Estland: ObligationenRG 2001**

§ 1044. Claims filed on other basis

(1) The provisions of this Chapter do not preclude or restrict the right of a victim to claim compensation for damage on a legal basis other than that provided in this Chapter or the right to make other claims, unless otherwise provided by law.

(2) Compensation for damage arising from the violation of contractual obligations shall not be claimed on the bases provided in this Chapter, unless otherwise provided by law. Compensation for damage arising from the violation of contractual obligations may be claimed on the bases provided in this Chapter if the objective of the violated contractual obligation was other than to prevent the damage for which compensation is claimed.

(3) If the death, bodily injury or damage to the health of a person is caused as a result of the violation of a contractual obligation, the tortfeasor shall be liable for such damage on the basis provided in this Chapter.

- **Lit. ZGB 2000**

Article 6.245. Concept and kinds of civil liability

2. Civil liability is of two kinds: contractual liability and non-contractual (delictual) liability.
3. Contractual liability is a pecuniary obligation resulting from a failure to perform a contract ...
4. Non-contractual (delictual) liability is a pecuniary obligation which is not related with contractual relations, except in cases where it is established by laws that delictual liability shall also result from damage related with contractual relations.

- **Russ. ZGB (Teil 2) 1996**

Paragraph 3. Compensation for Harm Caused in Consequence of Defects in Goods, Works or Services

Article 1095. Grounds for Compensation for Harm Caused in Consequence of Defects in Goods, Works or Services

The harm caused to a citizen's life, health or property or to property of a legal person in consequence of defects ... defects of goods, ... shall be subject to compensation ... irrespective of ... whether or not the victim had contractual relations with them.

- **Finnland: SchadensersatzG 1974**

Chapter 1 — Scope of application

Section 1: This Act applies to liability for damages. However, unless otherwise provided in this or another Act, this Act does not apply to liability for damages under contract or as provided in another Act.

Ergebnis zu Thema 1: Anwendungsbereich des DeliktsR u. Verhältnis zu anderen Rechtsgebieten

- **Deutschland:**
Anspruchskonkurrenz (implizit)
- **Polen: § 443 poln. ZGB** grds. Anspruchskonkurrenz
- **Estland: § 1044 estn. ObligationenRG** (grds. Anspruchskonkurrenz, aber grds. Ausnahme ggü. vertragl. Haftung)
- **Litauen: Art.6.245 Pkt.2 und 3 lit. ZGB:**
Trennung der Anwendungssphären von DeliktsR und VertragsR
- **Russland:** Vorrang des VertragsR (trad. Rspr., auch arg. e contrario **Art.1095 russ. ZGB**)
- **Finnland (Schweden): Kap.1 § 1 SchadensersatzG:** wohl Vorrang des VertragsR (keine Anwendbarkeit des SchadensersatzG)

Thema 2a: Haftungsvoraussetzungen bei Verschuldenshaftung (Grundfall)

- **Dt. BGB: §§ 823 I, II, 826**

- **Poln. ZGB 1964**

§ 415 Wer einem anderen schuldhaft einen Schaden zugefügt hat, ist zum Schadensersatz verpflichtet.

- **Finnland: SchadensersatzG 1974**

Chapter 2 — Liability of the person causing injury or damage

Section 1

(1) A person who deliberately or negligently causes injury or damage to another shall be liable for damages, unless otherwise follows from the provisions of this Act.

- **Russ. ZGB (Teil 2) 1996**

Chapter 59. Obligations in Consequence of Causing of Harm

Paragraph 1. General Provisions on Compensation for Harm

Article 1064. General Grounds for Responsibility for Causing of Harm

1. Harm caused to the personality or property of a citizen, as well as harm caused to property of a legal person shall be subject to compensation in full by the person who has caused the harm. ...

2. The person who has caused harm shall be released from compensating for harm, if he proves that the harm has not been caused through a fault of his. A law may also provide for compensation for harm in the absence of the harm causers fault.

- **Estland: ObligationenRG 2001**

§ 1043. Compensation for unlawfully caused damage

A person (tortfeasor) who unlawfully causes damage to another person (victim) shall compensate for the damage if the tortfeasor is culpable of causing the damage or is liable for causing the damage pursuant to law.

§ 1045. Unlawfulness of causing of damage

(1) The causing of damage is unlawful if, above all, the damage is caused by:

- 1) causing the death of the victim;
- 2) causing bodily injury to or damage to the health of the victim;
- 3) deprivation of the liberty of the victim;
- 4) violation of a personality right of the victim;
- 5) violation of the right of ownership or a similar right or right of possession of the victim;
- 6) interference with the economic or professional activities of a person;
- 7) behaviour which violates a duty arising from law;
- 8) intentional behaviour contrary to good morals.

(2) The causing of damage is not unlawful if:

- 1) the right to cause damage arises from law;
- 2) the victim consents to the damage being caused, except in the case where the grant of such consent is contrary to law or good morals;
- 3) the tortfeasor acted in self-defence or in necessity;
- 4) the tortfeasor legitimately used self-help to perform or protect the tortfeasor's rights.

(3) The causing of damage by the violation of a duty arising from law is not unlawful if the objective of the provision which the tortfeasor violates is other than to protect the victim from such damage.

Thema 2b: Haftungsvoraussetzungen bei Verschuldenshaftung (Grundfall)

- **Lit. ZGB 2000**

CHAPTER XIII: CIVIL LIABILITY

SECTION ONE: GENERAL PROVISIONS

Article 6.246. Unlawful actions

1. Civil liability shall arise from non-performance of a duty established by laws or a contract (unlawful refrainment from acting), or from performance of actions that are prohibited by laws or a contract (unlawful acting), or from violation of the general duty to behave with care.
2. It may be established by laws that a person shall be bound to compensate damage he has not caused himself but is responsible for the actions of another person who inflicted the damage (indirect civil liability).
3. Damage caused by lawful actions must be compensated only in cases expressly specified by laws.

Article 6.247. Causation

Only those damages can be compensable which are related to actions (acting or refrainment from acting) giving rise to civil liability of the debtor in such a manner that the damages, taking into account their nature and that of the civil liability, can be imputed to the debtor as a result of his actions (acting or refrainment from acting).

Article 6.248. Fault as a condition for civil liability

1. Civil liability shall arise only upon the existence of the fault of the obligated person, except in the cases established by laws or a contract when civil liability arises without fault. The fault of a debtor shall be presumed, except in the cases established by laws.
2. Fault may be expressed by intention or negligence.
3. A person shall be deemed to have committed fault where taking into account the essence of the obligation and other circumstances he failed to behave with the care and caution necessary in the corresponding conditions.

SECTION THREE: NON-CONTRACTUAL (DELICTUAL) LIABILITY

Article 6.263. Obligation to compensate for damage caused

2. Any bodily or property damage caused to another person and, in the cases established by the law, non-pecuniary damage must be fully compensated by the liable person.

Ergebnis zu Thema 2: Haftungsvoraussetzungen bei Verschuldenshaftung (Grundfall)

- **Deutschland:** Kombination drei „kleiner“ Generalklauseln
 - **Polen:** Generalklausel nach frz. Vorbild
 - **Estland:** grds. Generalklausel nach frz. Vorbild, wird aber durch Katalogaufzählung r-widriger Schädigungen auf Rechtsgüterschutz und Schutzgesetzverletzung hin konkretisiert
 - **Litauen: Art.6.263 ZGB** Generalklausel, deren Elemente durch den “AT” des DeliktsR ergänzt werden (Rechtswidrigkeit, Kausalität, Verschulden)
 - **Russland:** Generalklausel nach frz. Vorbild (**Art.1064 ZGB**), aber wird durch EinzelTBs ergänzt
 - **Finnland (Schweden):** Generalklausel nach frz. Vorbild, aber auf Rfolgenseite Differenzierung in Anlehnung an dt Recht (Verletzung best. RGüter, reine Vermögensschäden etc.).
- S. Finn. SchadensersG Chapter 5 — Damages**
Section 1: Damages shall constitute compensation for personal injury and damage to property. **Where the injury or damage has been caused by an act punishable by law or in the exercise of public authority**, or in other cases, where there are especially weighty reasons for the same, **damages shall also constitute compensation for economic loss that is not connected to personal injury or damage to property.**

Thema 3a: Haftung für Drittpersonen

- **Dt. BGB:**

§ 831 **Verrichtungsgehilfen** (Diff. zu Erfüllungsgehilfen § 278): Haftung für vermutetes Eigenverschulden mit Exkulpationsmöglichkeit; § 31 unmittelbare Zurechnung bei **Organen** von j.P.

- **Poln. ZGB 1964**

§ 416 Eine juristische Person ist zum Ersatz des Schadens verpflichtet, den ihr Organ schuldhaft verursacht hat.

§ 429 Wer die Ausführung eines Geschäfts einem anderen überträgt, haftet für einen vom Schädiger bei der Ausführung ihm übertragenen Geschäfts verursachten Schaden, es sei denn, dass ihn bei der Auswahl kein Verschulden getroffen hat oder dass er die Ausführung des Geschäfts einer Person ... anvertraut hat, die sich berufsmäßig mit der Ausführung solcher Geschäfte befasst(t).

§ 430 Wer auf eigene Rechnung die Ausführung eines Geschäfts einer Person überträgt, die hierbei seiner Leitung unterliegt und verpflichtet ist, sich nach seinen Anweisungen zu richten, haftet für einen von dieser Person bei der Ausführung des Geschäfts verursachten Schaden.

- **Lit. ZGB 2000**

SECTION THREE: NON-CONTRACTUAL (DELICTUAL) LIABILITY

Article 6.264. Liability of an employer for damage caused by the fault of his employees

1. An employer shall be liable to compensation for damage caused by the fault of his employees in the performance of their service (official) duties.
2. For the purposes of this Article, employees are considered to be persons exercising their functions on the grounds of a labour or civil contract and acting under the supervision or in accordance with the orders of the corresponding legal or natural person.

Article 6.265. Liability to compensation for damage caused by others

1. Where damage is caused by a person, who is not an employee, acting under the orders of another person who is not his employer, it must be compensated solidarily by both persons concerned.
2. A represented person himself and the representative executing his mandate shall be solidarily liable to make compensation for the damage caused by the latter.

- **Russ. ZGB (Teil 2) 1996**

Article 1068. Responsibility of Legal Entity or Citizen for Harm Caused by Their Employee

1. A legal person or citizen shall compensate for the harm caused by their employee while performing his labour (ministerial, official) duties.

As applied to the rules provided by the present Chapter, citizens shall be deemed to be employees if they carry out a work on the basis of a labour agreement (contract), including citizens who carry out a work under a civil-law contract, if, in so doing, they acted or must have acted following the task of the respective legal person or citizen and under his control over safe performance of works.

2. Economic partnerships and production cooperatives shall compensate for the harm caused by their participants (members) while the latter were conducting entrepreneurial, productive or other activity of the partnership or cooperative.

Thema 3b: Haftung für Drittpersonen

- **Finnland: SchadensersatzG 1974**

Chapter 3 — Vicarious liability of employers and public corporations

Section 1

(1) An employer shall be vicariously liable in damages for injury or damage caused by an employee through an error or negligence at work. A person shall also be deemed to be an employer where he/she assigns work to an independent entrepreneur who, in view of the permanent nature of the assignment, the nature of the work and the other circumstances is to be paralleled an employee.

- **Dt. BGB**

**§ 831 Verrichtungs-
gehilfen** (Diff. zu
Erfüllungsgehilfen § 278):
Haftung für vermutetes
Eigenverschulden mit
Exkulpationsmöglichkeit.

§ 31 unmittelbare Zurech-
nung bei **Organen** von
j.P.

- **Lit. ZGB 2000**

SECTION THREE: NON-CONTRACTUAL (DELICTUAL) LIABILITY

Article 6.264. Liability of an employer for damage caused by the fault of his employees

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2. A represented person himself and the representative executing his mandate shall be solidarily liable to make compensation for the damage caused by the latter.

Schadensrecht: Übersicht über einige Regelungen

• Poln. ZGB 1964

Art. 361 § 1 Wer zum Schadensersatz verpflichtet ist, haftet nur für die normalen Folgen der schadensstiftenden Handlung oder Unterlassung.

Art.362 Hat der Geschädigte an der Entstehung oder Vergrößerung des Schadens mitgewirkt, so wird die Schadensersatzpflicht den Umständen entsprechend und insbesondere dem Grad des Verschuldens beider Seiten entsprechend verringert

Art.363 § 1 Schadensersatz muss nach der Wahl des Geschädigten entweder durch Wiederherstellung des früheren Zustands oder durch Zahlung eines entsprechenden Geldbetrags geleistet werden. Ist die Wiederherstellung ... unmöglich oder würde sie für den Verpflichteten übermäßige Schwierigkeiten oder Kosten nach sich ziehen, so beschränkt sich der Anspruch ... auf eine Geldleistung.

Art.440 In den Beziehung zwischen natürlichen Personen kann der Umfang der Schadensersatzpflicht den Umständen entsprechend begrenzt werden, wenn die Grundsätze des gesellschaftlichen Zusammen-lebens unter Berücksichtigung des Vermögensstands des Geschädigten oder des für den Schaden Verantwortlichen eine solche Begrenzung erfordern.

• Russ. ZGB

Im ZGB-AT: Art.15 Compensating for losses

1. The person whose right has been violated can demand that the losses (ubytki) inflicted on him be compensated for, unless the law or contract stipulates a smaller recovery.
2. Losses imply the expenses that the person whose right had been violated incurred or will have to incur in order to restore the violated right, the loss or damage of his property (actual damage), as well as lost revenues this person could have received under normal conditions of civil circulation, had his right not been violated (lost profit). If the right-breaker made gains in consequence of this, the victim has the right to demand that, besides other losses, the lost profit be recovered in the amount no less than such gains.

Teil III: SchuldR-AT, dort Kap.25 Haftung für Verletzung einer Verpflichtung, Art.393 – 406: gilt wohl grds. nur im Rahmen bestehender Schuldbeziehungen, aber uU Analogie denkbar.

Kap.59 Unerlaubte Handlungen (Art.1064 ff) enthalten einige Sondervorschriften zum SchadensR, z.B.

Article 1082. Procedures to Compensate for Harm

When satisfying a claim for compensation for harm, the court proceeding from circumstances shall obligate the person responsible for the causing of harm to compensate for the harm in kind (provide a thing of the same kind and quality, repair the damaged thing, etc.) or compensate for losses caused (Article 15[2]).

Article 1083. Allowing for Fault of Victim and Property Status of Person Who Has Caused Harm

2. If gross negligence of the victim himself has favoured the occurrence or growth of the harm, the amount of compensation must be reduced depending on the degree of fault of the victim and the harm causer.
3. A court may reduce the amount of compensation for the harm caused by a citizen, taking into account his property status, except in instances where harm has been caused by an intentionally committed action.

Schadensrecht: Übersicht über einige Regelungen

Estn. ObligationenrechtsG 2001

Chapter 7 COMPENSATION FOR DAMAGE

§ 127. Purpose and extent of compensation for damage

§ 128. Types of damage subject to compensation

§ 129. Compensation for patrimonial damage upon causing death

§ 130. Compensation for damage in case of health damage or bodily injury

§ 131. Compensation for patrimonial damage in case of deprivation of liberty or violation of personality rights

§ 132. Compensation for damage in case of destruction, loss of or damage to thing

§ 133. Compensation for damage caused by environmentally hazardous activities

§ 134. Specifications for compensation for non-patrimonial damage

§ 135. Offsetting price differences

§ 136. Manner of compensation for damage

§ 137. Compensation for damage paid by several persons

§ 138. Common liability for damage

§ 139. Damage due in part to aggrieved person

§ 140. Limits on compensation for damage

Chapter 53 UNLAWFUL CAUSING OF DAMAGE, §§ 1043 - 1067 : enthalten praktisch keine Regelungen zum SchadensR

• Finn. SchadensersatzG 1974

Chapter 3 Vicarious liability

Section 6: If the liability in damages referred to in this chapter is deemed manifestly unreasonable or if, in view of the extent of the injury or damage and the other circumstances, there is a special reason for the same, the damages may be adjusted.

Chapter 5 — Damages

Section 1: Damages shall constitute compensation for personal injury and damage to property. Where the injury or damage has been caused by **an act punishable by law** or in the exercise of public authority, or in other cases, where there are especially weighty reasons for the same, damages shall also constitute **compensation for economic loss** that is not connected to personal injury or damage to property.

Section 2: A person who has suffered a bodily injury or other personal injury shall be entitled to damages to cover medical costs and the other costs arising from the injury, as well as loss of income and maintenance, pain and suffering, invalidity and other permanent handicap.

Section 3: *Damages covering funeral expenses ...*

Section 4: *If a person entitled to maintenance or child support*

Section 5: *Damages for property damage* shall cover the costs of repair of the daaged object, the other costs arising from the damage, the reduction in value or the value of an object that has been destroyed or lost, as well as the loss of income and maintenance.

Section 6: The provisions of this Act on personal injury apply also to damages for the **anguish arising from an offence against liberty, honour or the domestic peace or from another comparable offence.**

Chapter 6 — Allocation of liability

Section 1: If there has been a contribution to the injury or damage from the side of them person sustaining it or if a circumstance external to the act giving rise to the injury or damage has also been involved, the damages may be adjusted as is reasonable.

Section 2: Where the injury or damage has been caused by two or more persons ..., the liability shall be joint and several. ...

Themen aus dem SchadensR zum Vergleich

- **Thema 1: Anwendungsbereich des SchadensR**
- **Thema 2: Totalrestitution oder Teilrestitution (Begrenzung des Ersatzes)**
- **Thema 3: Schadenspositionen**
- **(Thema 4: Naturalrestitution oder Geldersatz)**

Ergebnis zu Thema 1: Anwendungsbereich des SchadensR

- **Dt. BGB:**

§§ 249 ff gelten für alle SEAs (insbes. sowohl aus Vertrag als auch aus Delikt); daneben einzelne Sondervorschriften im DeliktsR, z.B. §§ 842 - 846.

- **PoIn. ZGB 1964**

§ 361 – 363 (in den „Allgemeinen Vorschriften“ des SchuldR; nicht identisch mit SchuldR-AT im dt. Sinn) gelten für alle SEAs. Beschränkt auf wenige Regelungen: Umfang des Schadensersatzes, Mitverschulden, Art der Leistung des Schadensersatz
Weitere Vorschriften zum SchadensR in besonderen Abschnitten, zB im DeliktsR § 417/2, 440, 444, 445, 446, 446/1, 447 448.

- **Finn SchadensersG 1974**

Schadens-r Regelungen insbes. in Kap.5 des Gesetzes, gelten grds. nur im DeliktsR. Im übrigen Analogien denkbar, aber ebenso zu den schadens-s Vorschriften des KaufRGesetzes.

- **Estn. ObligationenRG 2001**

Kap.7 dieses Gesetzes regelt SchadensR sehr systematisch und detailreich. Gilt für alle SEAs. Kaum Sonderregeln zum SchadensR in anderen Abschnitten.

- **Russ. ZGB (Teil 2) 1996**

Art.15 ZGB gilt für alle SEAs, Art.393 ff nur im Rahmen bestehender schuld-r Beziehungen, Art.1064 ff enthalten recht ausführliche Regelungen zum SchadensR bei Delikten. Analogie in anderen Feldern des SchuldR wäre denkbar.

Thema 2: Totalrestitution oder Teilrestitution

• Poln. ZGB 1964

§ 361 § 2 Der Schadensersatz umfasst mangels abweichender Gesetzesvorschriften oder Vertragsvereinbarungen ... die Einbußen, die der Geschädigte erlitten hat sowie die Vorteile, die er hätte erzielen können, wenn ihm der Schaden nicht entstanden wäre.

Art.440 In den Beziehungen zwischen natürlichen Personen kann der Umfang der Schadensersatzpflicht den Umständen entsprechend begrenzt werden, wenn die Grundsätze des gesellschaftlichen Zusammenlebens unter Berücksichtigung des Vermögensstands des Geschädigten oder des für den Schaden Verantwortlichen eine solche Begrenzung erfordern.

Danish Liability for Damages Act 2005

Part 1: Compensation for personal injury and loss of dependency

Personal injury

§ 1. A party who is liable in damages for personal injury shall pay compensation for loss of earnings, recovery costs and other losses resulting from the injury together with compensation for pain and suffering.

Section 2 If the injury has had lasting consequences, compensation shall also be paid for permanent injury and loss or impairment of earning capacity.

Finn SchadensersG 1974

Chapter 2 — Liability of the person causing injury or damage

Section 1

(1) A person who deliberately or negligently causes injury or damage to another shall be liable for damages ...

(2) The damages may be adjusted if the liability is deemed unreasonably onerous in view of the financial status of the person causing the injury or damage and the person suffering the same, and the other circumstances. However, if the injury or damage has been caused deliberately, full damages shall be awarded unless it is deemed that there are special reasons for a reduction in the damages.

Estn. ObligationenRG 2001

§ 127. Purpose and extent of compensation for damage

(1) The purpose of compensation for damage is to place the aggrieved person in a situation as near as possible to that in which the person would have been if the circumstances which are the basis for the compensation obligation had not occurred.

Ergebnis zu Thema 2: Totalrestitution oder Teilrestitution

- **Dt. BGB:**

Nach § 249 ff gilt Grundsatz der Totalrestitution, aber Begrenzung u.U durch Schutzzweck der Norm, Mitverschulden etc.

- **Poln. ZGB 1964**

§ 361 geht von Totalrestitution aus, aber Minderung bei Mitverschulden (§ 362) und bei Interessenabwägung gem. § 440 (nur zwischen natürlichen Personen!)

- **Dän. und finn Recht: SchadensersG 1974:**

vermeiden generelle Aussage zum Prinzip Total- oder Teilrestitution; geben bestimmte erstattungsfähige Positionen an, die nicht notwendig alles erfassen. Nach finn. R kann aus sozialen Gründen (Abwägung) SEA auf Teilbetrag begrenzt werden. Ähnlich wie in PL und auch in Russland (Art.1083 Pkt.3 russ. ZGB).

Thema 3: Erstattungsfähige Schadenspositionen

Estn. ObligationenRG 2001

§ 127. Purpose and extent of compensation for damage

(1) The purpose of compensation for damage is to place the aggrieved person in a situation as near as possible to that in which the person would have been if the circumstances which are the basis for the compensation obligation had not occurred.

(6) If damage is established but the exact extent of the damage cannot be established, including in the event of non-patrimonial damage or future damage, the amount of compensation shall be determined by the court. ...

§ 128. Types of damage subject to compensation

(1) Damage subject to compensation may be patrimonial or non-patrimonial.

(2) **Patrimonial damage** includes, primarily, direct patrimonial damage and loss of profit.

(3) Direct patrimonial damage includes, primarily, the value of the lost or destroyed property or the decrease in the value of property due to deterioration even if such decrease occurs in the future, and reasonable expenses which have been incurred or will be incurred in the future due to the damage, including reasonable expenses relating to prevention or reduction of damage and receipt of compensation, including expenses relating to establishment of the damage and submission of claims relating to compensation for the damage.

(4) Loss of profit is loss of the gain which a person would have been likely to receive in the circumstances, in particular as a result of the preparations made by the person, if the circumstances on which compensation for damage is based would not have occurred. Loss of profit may also include the loss of an opportunity to receive gain.

(5) **Non-patrimonial damage** involves primarily the physical and emotional distress and suffering caused to the aggrieved person.

§ 129. Compensation for patrimonial damage upon causing death

(1) In the case of an obligation to compensate for the damage arising from the death of a person, the obligated person shall compensate for the expenses arising from the death of the deceased person, in particular for reasonable funeral expenses, reasonable medical expenses relating to the health damage or bodily injury which caused the death of the person, and the damage arising from the aggrieved person's interim incapacity for work.

§ 133. Compensation for damage caused by environmentally hazardous activities

(1) If damage is caused by environmentally hazardous activities, damage related to deterioration in environmental quality shall also be compensated for in addition to the damage caused to persons or the property thereof. Expenses relating to preventing an increase in the damage and to applying reasonable measures for mitigating the consequences of the damage, and the damage arising from the application of such measures shall also be compensated for.

(2) Damage and expenses specified in subsection (1) of this section shall be compensated for to the extent and pursuant to the procedure provided by law.

§ 134. Specifications for compensation for non-patrimonial damage

(2) In the case of an obligation to compensate for damage arising from depriving a person of liberty, causing bodily injuries to or damage to the health of a person or violation of other personality rights, including defamation of a person, the aggrieved person shall be paid a reasonable amount of money as compensation for non-patrimonial damage.

Russ. ZGB: Art.15 Compensating for losses

1. The person whose right has been violated can demand that the losses (ubytki) inflicted on him be compensated for, unless the law or contract stipulates a smaller recovery.

2. Losses imply the expenses that the person whose right had been violated incurred or will have to incur in order to restore the violated right, the loss or damage of his property (**actual damage**), as well as lost revenues this person could have received under normal conditions of civil circulation, had his right not been violated (**lost profit**).

If the right-breaker made gains in consequence of this, the victim has the right to demand that, besides other losses, the lost profit be recovered in the amount no less than such gains.

Ergebnis zu Thema 3: Erstattungs-fähige Schadenspositionen

- **Dt. Recht:**

Bei Vermögensschäden grundsätzlich umfassende Ersatzpflicht („Differenzhypothese“; sehr abstrakt, Einschränkungen ergeben sich weitgehend nur aus Rechtsprechung und Lehre). Differenzierung zwischen delikt. und vertragl. Haftung findet in §§ 249 ff keinen Ausdruck, wird aber z.B. in Bezug auf pos. und neg. Interesse in der Rspr. bejaht. Schwierige Streitfragen zur Abgrenzung von (grds. ersatzfähigen) Vermögensschäden [mit Besonderheit, dass im DeliktsR reine Vermögensschäden nicht stets ersatzfähig sind, Vorrang des Schutzes bestimmter Rechtsgüter als Auslöser der Haftung) und (nur ausnahmsweise ersatzfähigen) Nichtvermögensschäden. Nach § 249 ff gilt Grds. der Totalrestitution, aber Begrenzung u.U durch Schutzzweck der Norm, Mitverschulden etc.

- **Poln. Recht:**

Dem dt. Recht grds. sehr ähnlich, mit ähnlichen Unklarheiten; aber im DeliktsR andere Ausgangsgrundlage wg Generalklausel. Sonderregelung zur Haftungsbeschränkung nach Interessenabwägung im DeliktsR gem. § 440.

- **Dän. und finn Recht:**

Vorteil relativ konkreter Regelungen, aber lückenhaft. Totalrestitution als Grds. nicht ausdrücklich gesetzlich verankert, gibt Flexibilität. Sonderregelung zur Haftungsbeschränkung nach sozialer Interessenabwägung im DeliktsR ähnlich wie im poln. (oder auch russ.) Recht. Interessant die teilw. Beschränkung der Haftung, wenn Versicherungsschutz besteht (aber in Finnland weniger ausgeprägt als in Dk).

Thema 4: Naturalrestitution oder Geldersatz

Poln. ZGB 1964

§ 363 § 1 Schadensersatz muss nach der Wahl des Geschädigten entweder durch Wiederherstellung des früheren Zustands oder durch Zahlung eines entsprechenden Geldbetrags geleistet werden. Ist die Wiederherstellung ... unmöglich oder würde sie für den Verpflichteten übermäßige Schwierigkeiten oder Kosten nach sich ziehen, so beschränkt sich der Anspruch ... auf eine Geldleistung.

Lit. ZGB 2000

CHAPTER XIII: CIVIL LIABILITY

SECTION ONE: GENERAL PROVISIONS

Article 6.245. Concept and kinds of civil liability

1. Civil liability is a **pecuniary** obligation one party of which shall have the right to claim for compensation of damages (damage) or demand payment of the penalty (fine, interest), and the other party shall be bound to make compensation for damages (damage) arising therefrom, or pay the penalty (fine, interest).
2. Civil liability is of two kinds: contractual liability and non-contractual (delictual) liability.
3. Contractual liability is a **pecuniary** obligation resulting from a failure to perform a contract or from its defective performance where one party of the obligation has the right to claim for compensation of damages or demand payment of penalty (fine, interest), and the other party is bound to make compensation for damages, or to pay penalty (fine, interest) caused by the failure to perform the contract, or by a defective performance thereof.
4. Non-contractual (delictual) liability is a **pecuniary** obligation which is not related with contractual relations, except in cases where it is established by laws that delictual liability shall also result from damage related with contractual relations.

Ergebnis zu Thema 4: Naturalrestitution oder Geldersatz

Poln. R: überläßt die Entscheidung zwischen Naturalrestitution und Geldersatz grds. dem Geschädigten. Litauisches Recht: Schadensersatz grds. nur als Geldersatz.

Vergleiche selbst das poln. und das litauische Recht mit:

- **deutschem BGB**
- **finn SchadensersG 1974**
- **estn. ObligationenRG 2001**
- **russ. ZGB (Teil 1 und 2)**

Fragen zum Vergleich:

- Welche Lösung ist die einfachste, klarste? Gibt es Bedenken gegen diese Lösung?
- Nach welchem Recht werden die Interessen des Geschädigten am stärksten geschützt?
- Welches Recht erscheint in bezug auf die Abwägung der Interessen des Geschädigten und des Schädigers (und ggf. Dritter oder der Öffentlichkeit) am überzeugendsten?