

Prof. Dr. Alexander Trunk

# **Vorlesung / Course**

*Einführung in die Rechtsvergleichung*  
***Introduction to Comparative Law***

**Winter term (WS) 2014-2015**

**<http://eastlaw.uni-kiel.de>**

27.10.2014: Basic questions and structures of comparative law

*30.10.2014 optional lecture on the legal position of women in China*

03.11.2014: Methods of comparative law *[in addition: guest lecture on Russian constitutional law]*

10.11.2014: Methods of comparative law (cont.)

17.11.2014: German legal family (deutscher Rechtskreis)

24.11.2014: German legal family (cont.)

*28./29.11.2014 optional possibility to participate in conference „Settlement of international trade disputes in/with countries of the region of Caucasus/Central Asia“ (Landeshaus Kiel)*

01.12.2014: French legal family

08.12.2014: Anglo-American legal family

15.12.2014: Anglo-American legal family (cont.). The legal systems in Northern and Eastern Europe

12.1.2015: Legal systems in Asia. Religious laws

19.1.2015: Law of contract

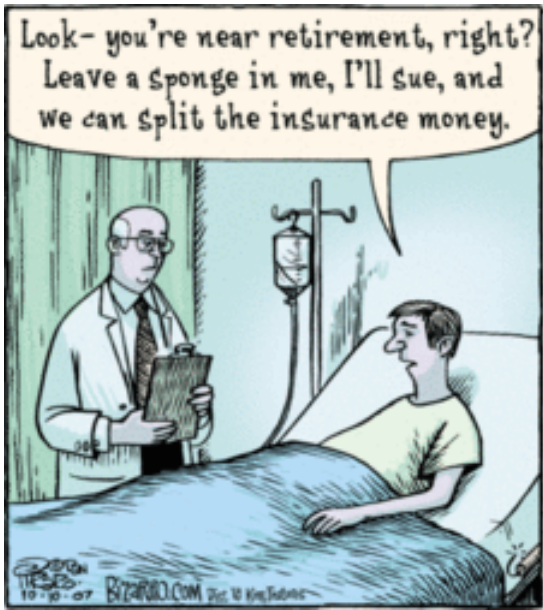
26.1.2015: **Law of torts**

*02.02.2015: Law of property (Sachenrecht). Commercial law (alternative date will be agreed)*

09.02.2015: Civil procedure and arbitration

# Steps of comparison

- 1) Formulate the research question
- 2) Find applicable legal norms or jurisprudence.  
*Quote exactly!*
- 3) Common elements
- 4) Differences
- 5) Which are the underlying (possibly divergent) value judgments?
- 6) Make your own evaluation
- 7) Consequences, e.g. proposal de lege ferenda





# Law of torts

**Starter case:** Cass. Civ. 8.5.1970, Bull.Civ. II Nr.122, Allamigeon Frères c Lafarge

Construction firm Lafarge damages during works a gas pipe, which interrupts the production Allamigeon Frères.

→ C.cass awards damages, as damages are „conséquence directe“ of the detrimental act.

→ Topic of comparison of jurisprudence

**Cour de Cassation, Chambre civile 2, du 8 mai 1970, 69-11.446, Publié au bulletin des arrêts de la Cour de Cassation Chambre civile 2 N. 160 P. 122**

SUR LE MOYEN UNIQUE : ATTENDU QUE, SELON L'ARRET INFIRMATIF ATTAQUE, UNE DE LA COMPAGNIE FRANCAISE DU METHANE, ALIMENTANT L'USINE DE LA **SOCIETE ALLAMIGECANALISATION DE GAZON FRERES ET LACROIX**, FUT ROMPUE PAR UN BULL-DOZER, AU COURS DE TRAVAUX EFFECTUES PAR LAFARGE, ENTREPRENEUR;

QU'IL EN RESULTA UN **PREJUDICE** POUR CETTE SOCIETE, CONTRAINTE **D'INTERROMPRE SON ACTIVITE**;

QU'ELLE A **ASSIGNE LAFARGE EN REPARATION DE SES DOMMAGES**;

ATTENDU QU'IL EST FAIT GRIEF A LA COUR D'APPEL, QUI A DECLARE LAFARGE RESPONSABLE, DE N'AVOIR PAS TIRE LES CONSEQUENCES JURIDIQUES DE SES CONSTATATIONS, DESQUELLES RESULTAIT UN **PREJUDICE INDIRECT** NE POUVANT DONNER LIEU A REPARATION;

MAIS ATTENDU QU'APRES AVOIR RELEVE QUE LES FAITS NE FAISAIENT L'OBJET D'AUCUNE CONTESTATION ET QUE L'ACTION TROUVAIT SON FONDEMENT DANS LES DISPOSITIONS DES **ARTICLES 1382 ET 1384 DU CODE CIVIL**, L'ARRET ENONCE QUE LE PREJUDICE SUBI, PAR LA SOCIETE ALLEMIGEON FRERES ET LACROIX, APPARAISSAIT COMME UNE **CONSEQUENCE DIRECTE** DE LA RUPTURE DE LA CANALISATION PUISQUE CE PREJUDICE AVAIT ENTRAINE L'INTERRUPTION DE L'ACTIVITE DE L'USINE, QU'IL S'AGISSAIT BIEN LA D'UN DOMMAGE EN RELATION DIRECTE AVEC LE FAIT DOMMAGEABLE;

ATTENDU QU'EN STATUANT COMME ELLE L'A FAIT LA COUR D'APPEL A, SANS ENCOURIR LES CRITIQUES DU POURVOI, DONNE UNE BASE LEGALE A SA DECISION;

**PAR CES MOTIFS : REJETTE LE POURVOI** FORME CONTRE L'ARRET RENDU LE 15 JANVIER 1969 PAR LA COUR D'APPEL DE BORDEAUX

# Torts law (overview)

- **System of the law of torts and damages (in a historic and comparative perspective)**
  - Torts law – criminal law
  - Separate torts – general clause (deliktische Generalklausel)
- **Legal sources.** *Example: art. 1382 C.civ. (US) Restatement of the Law on Torts (2nd and 3rd).*  
International and European harmonization? **DCFR Book VI Non-Contractual liability arising out of damage caused to another**



# Legal sources (1)

## French Civil Code

**BOOK III: OF THE VARIOUS WAYS HOW OWNERSHIP IS ACQUIRED** Articles 711 to 2283

**TITLE IV: OF UNDERTAKINGS FORMED WITHOUT AN AGREEMENT** Articles 1371 to 1370

**CHAPTER II: Of Intentional and Unintentional Wrongs [Of Torts]** Articles 1382 to 1386

**Art. 1382: Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it.**

**Art. 1383**

Everyone is liable for the damage he causes not only by his **intentional** act, but also by his **negligent** conduct or by his imprudence.

**Art. 1384**

A person is liable not only for the damages he causes by his own act, but also for that which is caused by the **acts of persons for whom he is responsible**, or by **things which are in his custody**.

**TITLE IV bis OF LIABILITY FOR DEFECTIVE PRODUCTS** Articles 1386-1 to 1386-18

# Legal sources (2)

## Restatement (Second) of Torts (1965)

Division 1 Intentional Harms to Persons, Land, and Chattels

Division 2 Negligence

### **§ 281 Statement of the Elements of a Cause of Action for Negligence**

The actor is liable for an invasion of an interest of another, if:

- (a) the interest invaded is protected against unintentional invasion, and
- (b) the conduct of the actor is negligent with respect to the other, or a class of persons within which he is included, and
- (c) the actor's conduct is a legal cause of the invasion, and
- (d) the other has not so conducted himself as to disable himself from bringing an action for such invasion.

Division 3 Strict Liability

Division 6A Privacy

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# Torts law: some important issues

- **General clause or separate torts?**  
Trespass, conversion, fraud,  
negligence, defamation
- **Relationship between tort and contractual liability**
- **Strict liability** (Gefährdungshaftung)
- **Proof of causality**
- **Liability for auxiliary persons**  
(vicarious liability)

**Vicarious liability:** The classic statement of the law until the recent cases was the formulation in *Salmond, Law of Torts* : a wrongful act is deemed to be done in the course of the employment:

*If it is either (1) a wrongful act authorised by the master, or (2) a wrongful and unauthorised mode of doing some act authorised by the master.* However, frequently when citing the principle of vicarious of liability practitioners stop there.

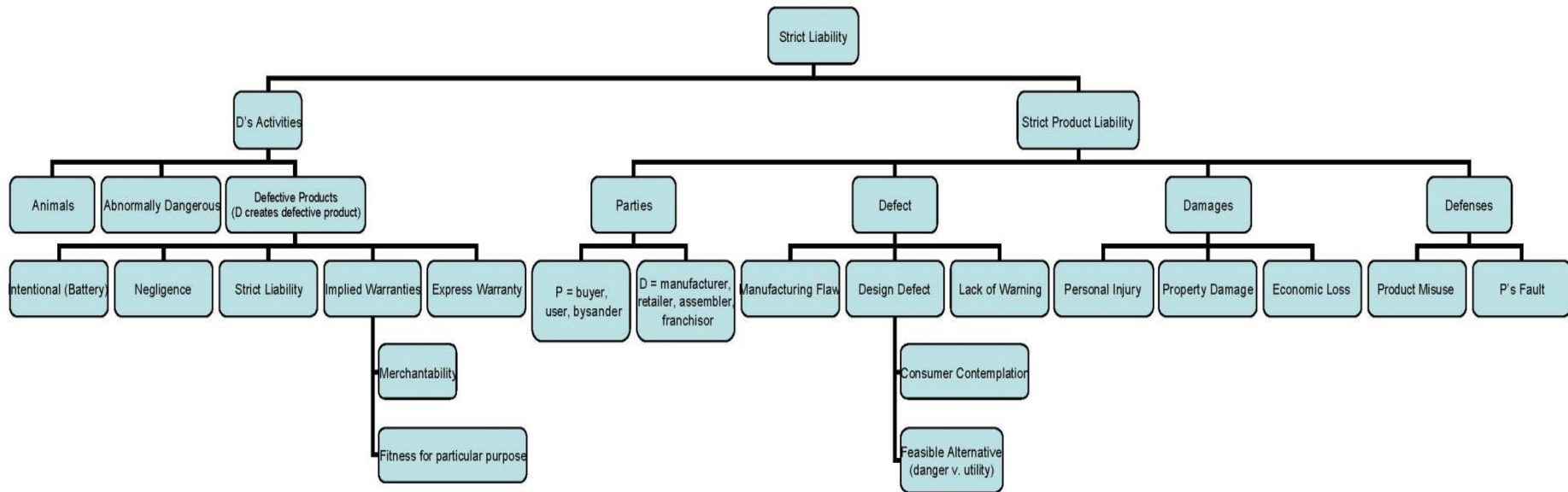
Whereas, the whole statement by Salmond needs to be considered: he continued:

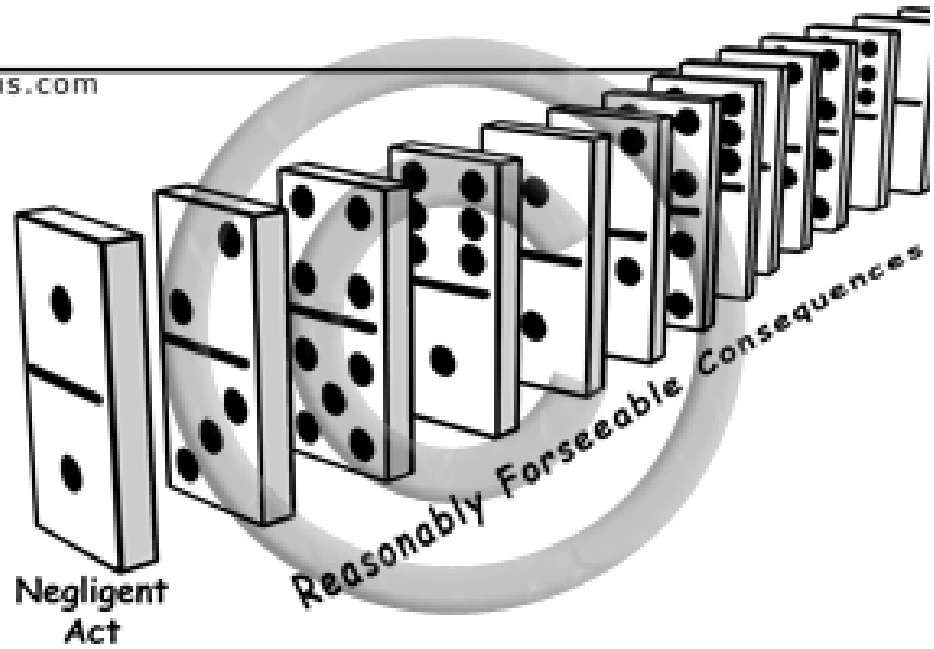
*It is clear that the master is responsible for acts actually authorised by him: for liability would exist in this case, even if the relation between the parties was merely one of agency and not one of service at all. But a master, as opposed to the employer of an independent contractor is liable even for acts which he has not authorised, provided they are so closely connected with the acts which he has authorised that they may rightly be regarded as modes - although improper modes - of doing them.*

# Strict Liability

§ 519 Restatement of Law (Torts) 2d (1965)

(1) One who carries on an abnormally dangerous activity is subject to liability, although he has exercised the utmost care to prevent such harm.





*"Do you have any picture books that could help a child understand tort reform?"*

