



# Tort Law

Cable cases

A photograph of a busy airport terminal at night. In the foreground, a security guard wearing a high-visibility vest is partially visible on the left. The background is filled with a large crowd of people, many of whom are wearing face masks. A man in the center-right foreground is wearing a blue shirt, a light-colored jacket, and a face mask, and is looking towards the camera. The scene is illuminated by the bright lights of the terminal, creating a sense of a busy, crowded environment.

15 FEBRUARY 2023

230 CANCELLED  
105 DELAYED





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# I. Dimension of the problem

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**1. Dimension of the problem**

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**2. Current legal framing**

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1. Dimension of the problem

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2. Current legal framing

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3. Better solution

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1. Dimension of the problem

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2. Current legal framing

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3. Better solution

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4. Methodological background



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**1. Dimension of the problem**

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2. Current legal framing

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3. Better solution

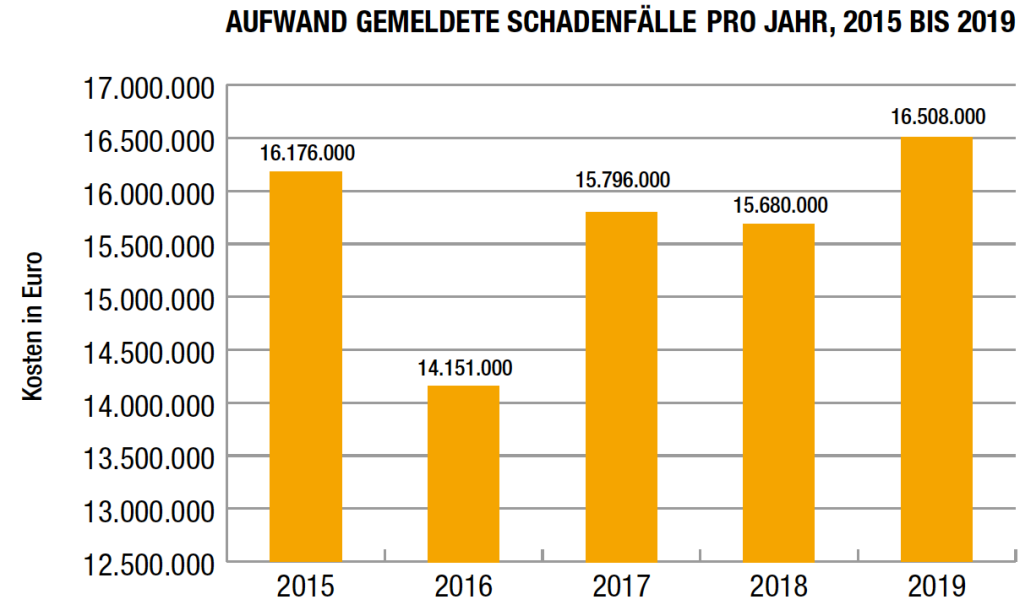
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4. Methodological background

5.669 incidents reported

insurance industry

2019



**Abb. 03:** Aufwand für die gemeldeten Schadenfälle pro Jahr, 2015 bis 2019 [Grafik: IFB, Daten: VHV]



Not include:

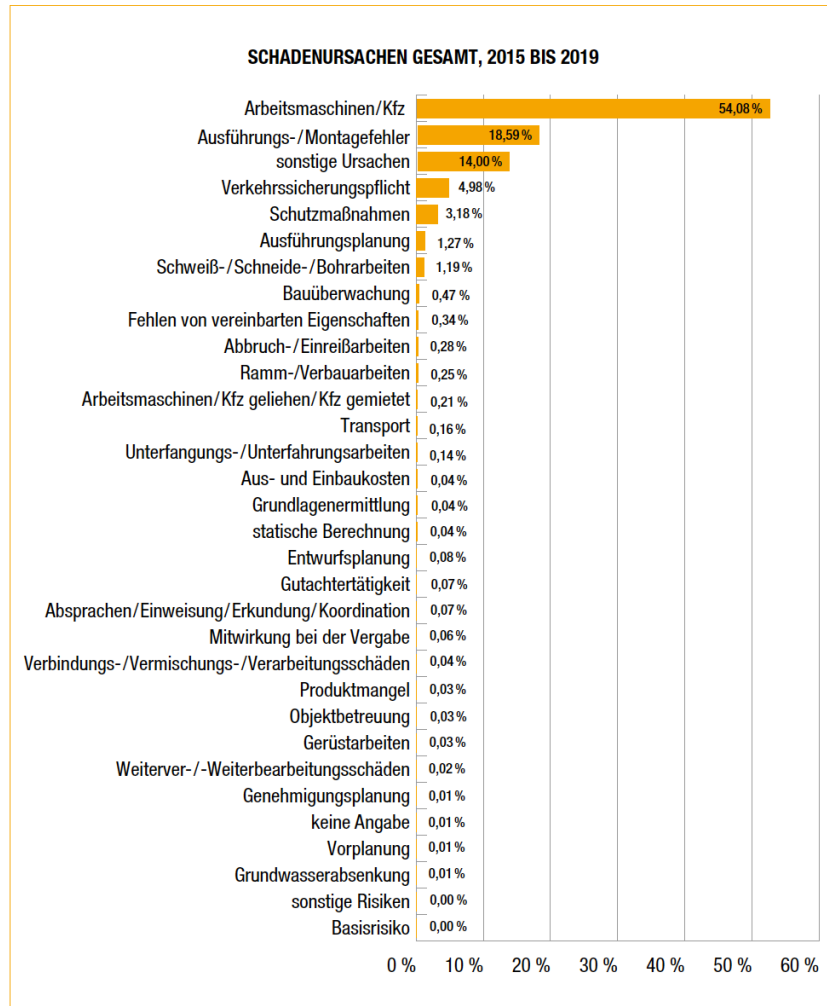
personal injuries

litigation costs

consequential loss

VST-Verband Sichere Transport- und Verteilnetzte/Kritis e.V.

17.10.2022



CAUSE

85%  
CONTRACTOR

Abb. 07: Festgestellte Schadenursachen, 2015 bis 2019 [Grafik: IFB, Daten: VHV]

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1. Dimension of the problem

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**2. Current legal framing**

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3. Better solution

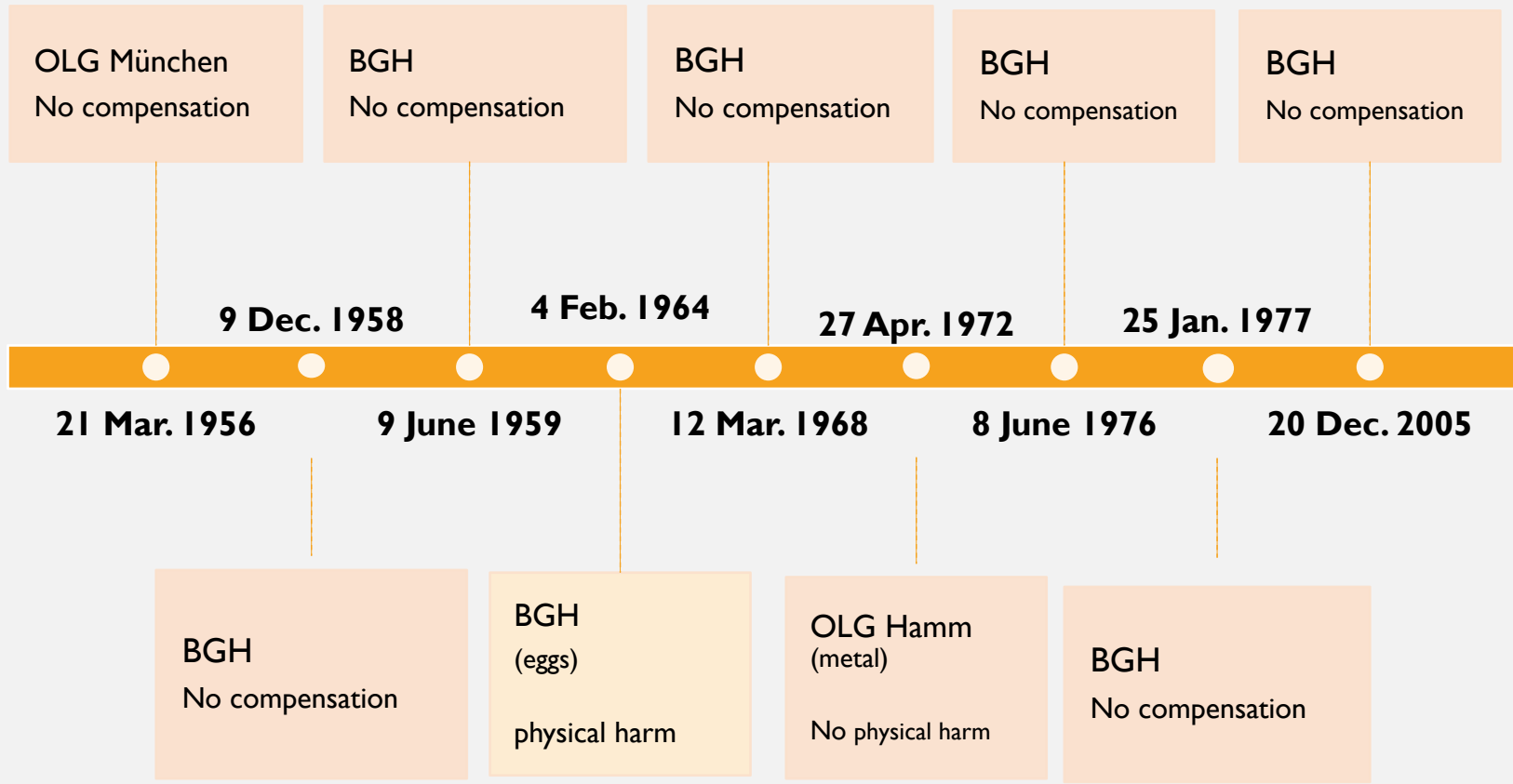
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4. Methodological background

# BGB

## § 823 I – absolute rights

- life
- body
- health
- freedom
- **property**
- other rights



## Compensation denied

- *Dynmaco Ltd v. Holland and Hannen and Cubitts (Scotland) Ltd*, [1972] SLT 38; [1971] SC 257
- *Beck v. FMC Corporation*, 02.07.1976
- *Tribunale di Torino*, 31.5.1978 (Enel v. Borio)
- *Tribunal Supremo* 18.9.1984
- *Nacap Ltd v. Moffat Plant Ltd* [1987] SLT 221
- *Tribunal da Relação de Coimbra* 26.11.1991 contributory negligence
- *Coleridge v. Miller Construction Ltd* [1997] SLT 485
- *Supremo Tribunal de Justiça* 21.11.2006



## Compensation granted

- *Cour de Cassation* 8.5.1970
- *Conseil d'État*, 25.02.1972
- *Conseil d'État* 2.6.1972 out-of-pocket expenses; not lost profit
- *Corte Suprema di Cassazione* 24.6.1972 (Puddu)
- *Spartan Steel & Alloys Ltd v. Martin & Co Ltd*, [1973] QB 27 only metal in the melt + lost profit
- *Hoge Raad* 1.7.1977
- *Tribunal Supremo* 4.5.1982 full compensation for lost profit
- *Hoge Raad* 25.5.2018
- 北京市天奇偉業市政工程有限公司與北京市南苑植物油廠財產損害賠償糾紛二審民事判決書 31.05.2018, 510.000 ¥ out of 1.9 million ¥ penalty clause

ABOLISH  
MACHINES?



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1. Dimension of the problem

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2. Current legal framing

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**3. Better solution**

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4. Methodological background

Compensation for breach?



Contractual  
liability

small  
breach

big  
outage



- does not share profit
- pays same utility price
- cheapest avoider
- why should it outsource the risk of disproportionate losses?

Warsaw Convention



small  
harm

big  
business





tort

negligent tortfeasor pays more?



**business** - cheapest avoider & beneficiary of the risk

**cable installer** - signal & protect

**central planning**

**contractor** – duty of care

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1. Dimension of the problem

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2. Current legal framing

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3. Better solution

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**4. Methodological background**

1896

general clause

enumeration § 823 I

Physical loss

All or nothing

EVERY COMPLEX QUESTION HAS A SOLUTION

THAT IS

SIMPLE, NEAT, AND WRONG

Mencken





- DESCARTES
- LEIBNITZ
- **PUCHTA**
- WINDSCHEID
- WOLFF
- Heck
- KELSEN
- Raz
- LARENZ
- CANARIS
- LANGE
- SCHIEMANN
- KOZIOL

ARISTOTLE

**T. AQUINAS**

KANT

ROUSSEAU

ARENDT

POPPER

**JHERING**

**SAVIGNY**

**L. HAND**

PUFENDORF

WILBURG

**GROTIUS**

GORDLEY

DWORKIN

MEDICUS

POPPER

**V. CAEMMERER**

**ENGISCH**

DOMAT

POTHIER

RAWLS



*OMNIS DEFINITIO PERICULOSA EST*

Guide

not decide

1946

Vaz Serra

ALL THEORIES CAN BE IMPROVED

business

Infrastructure manager

central mapping

contractor



AQUI DE BACCO,  
VAI Ô CAÑO  
DAS PIAS,

GRAZIE