

## Introduction to German Law

Additional Cases on the Law of Delict / Unjustified enrichment and benevolent intervention

**Case 1: The gentleman Rider's Case** (*Herrenreiterfall* – BGHZ 26, 349; English translation at <http://www.iuscomp.org/gla/judgments/tgcm/z580214.htm>):

P, the co-owner of a brewery is an active amateur rider. One day, when P is participating in a competition, a photographer takes P's picture on horseback and sells it to D GmbH. D uses P's picture in advertisements for a medicine which D claims will enhance sexual potency. When P becomes aware of this, he is infuriated and sues D for damages.

The German Supreme court (*Bundesgerichtshof*) upheld an award of damages of DM 10,000.

### Analysis - Claim under § 823 (1) BGB:

- Injury to an absolute right: Neither P's life, body, health, freedom or his property rights over a specific thing were violated. However, the Court held that P's Right to Privacy (*Allgemeines Pers nlichkeitsrecht*), was violated. This right is not enshrined in the civil code, its existence, but in the Basic Law's first two articles which proclaim the respect of human dignity and personal freedom as the fundamental principles of the German legal system.
- The injury was caused by D's action (publication of the photo). D acted illegally and intentionally.
- P suffered no pecuniary damage. § 847 BGB (now § 252 BGB) provides no basis for P to obtain compensation for non-pecuniary damages because there was no injury to P's to body, health, freedom or sexual self-determination. However, in order to protect the newly found right to privacy in an effective way, the Court held that an unwritten exception to § 253 BGB must be accepted. Thus, in the case of a violation of the right to privacy, a sum of money can be awarded as compensation for the distress suffered.
- Causal link between injury and damage: P suffered distress because of the violation of his right of privacy.

**Case 2: BGH, Neue Juristische Wochenschrift 1952, 1010:** Before 1939, T causes a road accident in which V is severely injured and loses a leg. A court finds that T is responsible for all present and future damage that V suffers as a consequence of the accident. During the war, V comes under heavy artillery fire. He is killed because he cannot run for cover.

## Analysis - Claim of V's heirs under § 823 (1) BGB:

### I. Claim based on V's death during the war.

- Injury: Loss of V's life.
- Caused by an act of T. Had T not caused the road accident before 1939, V would not have been killed in the war.
- T acted illegally, but he is not at fault with regard to the loss of V's life. Negligence presupposes foreseeability of the injury. It was not foreseeable that V would lose his life in the war as a consequence of the road accident years earlier-

### II. Claim based on injury to the body sustained before 1939

- Injury: Injury to V's body.
- Caused by T's driving
- According to the court's findings, V acted illegally. He was also negligent.
- Damages: The damage following from V's death in the war was caused by the injury sustained before the war: Had V not lost his leg in the traffic accident, he would not have been killed in the artillery attack.

According to the letter of the law, all damages caused by the injury to V's body can be recovered under § 823 (1) BGB. BUT, the court held that the liability does not extend to damage occurring due to an unlikely chain of events. Causation must be adequate.

The claim of V's heirs was denied.

## Unjustified enrichment – the converse of damages

Damages must be paid where one party has suffered a loss.

A claim for unjustified enrichment presupposes that the other party has an (unjustified) surplus in its patrimony.

The most important claim for unjustified enrichment in German law is § 812 (1) sentence 1, Alternative 1: Receipt of performance without legal basis.

Example: D pays € 1,000 to C because she thinks that she owes this amount of money under a contract of sale. In fact, the € 1,000 had already been paid by D's sister.

- C has received 'something' (*etwas erhalten*).
- Through D's performance (*Leistung*).
- Without a legal basis (*ohne Rechtsgrund*).