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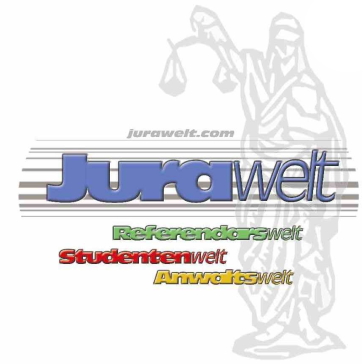

FRANK FELGENTRÄGER

IMPORTANT CASES

Das folgende Skript ist als Mitschrift im Rahmen der Fachfremdsprachenausbildung (FFA) zur Englischen Rechtssprache an der Universität Bielefeld entstanden. Es erhebt keinen Anspruch auf Vollständigkeit, sondern soll als Anregung dienen, welche Fälle aus dem Europarecht bzw. englischen Recht zu den „Klassikern" gehören.

IMPORTANT CASES

I. European Law 3
1. Dassonville (1974) 3
2. Cassis de Dijon (1979) 3
II. English Legal System 3
III. Contract Law 3
1. Carlill v. Carbolic Smoke Ball Company (1893) 3
2. Hover 3
3. Matrix Churchill 4
4. Beswick v. Beswick (1967) 4
5. The Moorcock (1889) 4
6. Olley v. Marlborough Court (1949) 4
7. Karsales [Company] v. Wallis (1956) 4
8. Courturier v. Hastie (1856) 5
9. Raffles v. Wichelhaus (1864) 5
10. Cundy v. Lindsay (1878) 5
11. Esso Petroleum v. Mardon (1976) 5
12. Nordenfelt v. Maxim Nordenfelt Guns + Ammunition Co. (1894) 5
13. Hoenig v. Isaacs (1952) 6
14. Bolton v. Mahadeva (1972) 6
15. Hochster v. De La Tour (1853) 6
16. Krell v. Henry (1903) 6
17. R + B Customs Brokers Company Ltd. v. United Dominions Trust Ltd. (1988) 6
IV. Law of Tort 7
1. Bradford Corporation v. Pickles (1895) 7
2. Wilkinson v. Downton (1897) 7
3. Leigh v. Gladstones (1909) 7
4. Stanley v. Powell (1891) 7
5. Vaughan v. Taff Railway Company (1860) 7
6. Metropolitan District Asylum Board v. Hill (1881) 7
7. R. v. Martin (2000) 8
8. Donoghue v. Stevenson (1932) 8
9. Condon v. Basi (1985) 8
10. McLoughlin v. O'Brian (1983) 8
11. Yachuk v. Oliver Blais Co. (1949) 9
12. Smith & Others v. Littlewood Organisation Ltd. (1987) 9
13. Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd. (1964) 9
14. Caparo Ind. v. Dickmann (1990) 9
15. Cassidy v. Daily Mirror Newspapers Ltd. (1929) 9
16. Newstead v. Express Newspaper Ltd. (1940) 10
17. Vize Telly v. Mudie's Select Library (1900) 10
18. O'Connor v. Swan & Edgar and Carmichael Contractors (1963) 10
19. Glasgow Corporation v. Taylor (1922) 10
20. Cook v. Midland G.W. Railway of Ireland (1909) 10
21. B.R. Board v. Herrington (1972) 11
22. Rylands v. Fletcher (1868) 11

I. European Law

1. Dassonville (1974)

- "all trading rules enacted by Member States which are **capable of hindering** directly or indirectly, actually or potentially, intra-Community trade are to be considered as measures having an effect equivalent to quantitative restrictions"
  - no actual effect has to be shown ("capable")
  - wide rule b/c of the word "indirect" – commercial and marketing rules fall under this word

2. Cassis de Dijon (1979)

- two changes to Dassonville-Formula:
  - "rule of reason" is a justification for breach of Dassonville-Formula
    - "obstacles to free movement within the EC must be accepted in so far as the (hindering) provisions are necessary to satisfy requirements relating to the protection of public health, the fairness of commercial transactions, the defence of the consumer etc."
  - there is no valid reason why goods that have been lawfully produced and marketed in one of the Member States should not be imported into any other Member State
    - therefore there is a presumption *(Vermutung)* that the product meets the requirements (public health etc. – *see above*) in any other Member State

II. English Legal System

R v. Turnbull, 1977 (criminal law)
Rules for the admissibility of evidence (R v Turnbull – test)

III. Contract Law

1. Carlill v. Carbolic Smoke Ball Company (1893)

offer or invitatio ad offerendum?
ad = invitatio, but exceptions
Ad can be offer to the world, if more information in it than required

- Defendants (Carbolic Smoke Ball Company):
  - manufacturer – medical product – "Carbolic Smoke Ball"
  - advertisment – national newspaper:
    - "**£ 100** to anybody – flu – product – after instructions"
    - "**token of our sincerity**: **£** 1,000 in bank."
- Plaintiff:
  - Mrs. Carlill – used – instructions – got ill
  - claimed **£** 100 from the Carbolic Smoke Ball Company
- Defendants:
  - advertisment – mere puff
    - just – invitation to treat
    - not possible to contract with the whole world
- **Court** of Appeal:
  - "Mrs. Carlill is entitled to the money"
  - "advertisment was an offer to the world at large"
    - "b/c the company has put more information than required"
    - **"they have shown that they had an intention to create legal relation"**

2. Hover

offer or invitatio ad offerendum?
ad = invitatio, but exceptions
Ad can be offer to the world, if more information in it than required

- same as in Carlill (see above)
  - "Everyone who buys a hover, gets a flight to America for free!"
  - **Court:** "Yes, they have to pay the flights! It was an offer!"

3. Matrix Churchill

not every contract is enforceable

trading with the enemy [and prostitution] = not enforceable

- MC traded with Iraq (sold gun to Iraq and could not sue Iraq for the money b/c it happened during Gulf War)

4. Beswick v. Beswick (1967)

usually: Privity of Contract, but exceptions

as administrator [and represented person, action by a beneficiary under a trust]

- A owned a small coal stocks and his nephew, B, helped him to run it
- Agreement between A and B that B gets the coal stocks after A's death and commits himself to make a payment to the widow of A
- A died, B did not pay
- C sued under two heads:
  - first: as the **administrator** of her husband's estate
  - second: in her **personal capacity**

- **Court:**
  - as administratrix: the widow obtained an order of specific performance **– exception to the rule of privity of contract**
  - in your personal capacity: "you can obtain no satisfaction b/c of the doctrine of privity"

5. The Moorcock (1889)

example for Implied Contract Terms/Duties

- respondent agreed with appelant that appelant can use the respondent's jetty and wharf *(Steg und Uferanlage)* to load and store cargo
- but river bed was owned by a third party
- appelant did not investigate river bed whether jetty was safe for the boat of the appelant
- jetty was not!
  - boat sank
  - **court:** „there is an implied duty to appelant that he has to investigate whether it was safe for the boat to use the jetty and wharf or not"
    - but only well-known customs can be implied in the contract

6. Olley v. Marlborough Court (1949)

exemption clauses – **not subsequent** to entering into the contract

- Olley rented a room in a hotel
- after she had contracted she entered the room and saw a sign on one of the walls of the room: "Owners are not responsible for things that get lost, stolen etc. unless they were given to them"
- Olley left room and gave the key to the hotel
- s.o. stole the key, entered Olley's room and stole things
- **Court:** hotel is liable b/c Olley saw sign **after** completion of contract
  - if Olley had stayed in the hotel before (had known the sign) then her action would have been unsuccessful

7. Karsales [Company] v. Wallis (1956)

exemption clauses do not apply, when **fundamental breach** of contract

- s.o. bought car
  - car was **in good condition** when he inspected it
- clause in contract: "no condition or warranty that the vehicle is roadworthy or as to its age, condition or fitness or any purpose is implied herein"
- however: when the car was delivered it was a totally different car b/c many new parts of it had been replaced by old ones which mostly were not even working
  - car was **in bad condition**
- Wallis claimed he did not agree to buy car in this condition
- **Court** (Lord Denning)**:**
  - thing delivered was not a car, but a totally different thing than that which had been contracted on
  - company did **fundamental breach** of contract

- so the clause does not apply

8. Courturier v. Hastie (1856)

operative mistake – **common mistake** on fundamental part – contract void

- two parties contracting on corn
- corn was on transit (on route (ship)) on the time contract was made
- unknown to both parties captain of ship sold corn on transit b/c it was going to perish (get rotten)
- **Court:**
  - there was no contract since the corn was not really in existence

9. Raffles v. Wichelhaus (1864)

operative mistake – **mutual mistake** on fundamental part – contract void

- buyer agreed to buy cotton, which will be transported on a ship called "peerless"
- in fact: there were two ships with that name
  - one ship went in October (buyer believed in this)
  - the other ship in December (seller believed in this)
- **Court:**
  - contract is void b/c there is no agreement – **mutual** mistake

10. Cundy v. Lindsay (1878)

operative mistake – unilateral mistake on fundamental aspect – contract void

- a man who was called **Blenkarn** was known to be a fraudster
  - he ordered some handkerchiefs from Lindsay
  - he signed the order in the way that signature looked like **"Blenk Iron + Co."** (which was a reputable Company!)
    - Blenk Iron + Co. have offices in the same street
  - Lindsay deliverd to Blenkarn, Blenkarn sold them to Cundy
    - now Lindsay wants them back
- **Court:**
  - the original contract was void for **unilateral** mistake (one party was mistaken about the identity of the contracting person – **fundamental** aspect of the contract)
  - although Cundy bought handkerchiefs rightly, Lindsay got goods back

11. Esso Petroleum v. Mardon (1976)

negligent misrepresentation, if company + experience

- Esso wanted to sell a petrol station to Mardon
- Esso told M. that the petrol sales will reach 200,000 gallons a year
  - however, due to restricted access to site, sales were < 78,000 gallons
- **Court:**
  - given their experience/skill in market research, Esso should have known about the correct number of petrol sales
    - **negligent misrepresentation!**

12. Nordenfelt v. Maxim Nordenfelt Guns + Ammunition Co. (1894)

general rule: contract in restraint of trade = void
but: sometimes exceptions for restraint of trade clauses (if compensation)

- Nordenfelt = known throughout world as an inventor and manufacturer of guns and ammunition
  - sold his business to a company and promised not to work in same field for 25 years
  - was liberally compensated (£ 200,000)
- but: after some years N. did enter into business with a rival company
- M. Nordenfelt Co. served an injunction to restrain him from doing so
- **Court** (HoL)**:**
  - **injunction is granted** as the agreement was reasonable and valid
  - and this is the case here b/c Nordenfelt was liberally compensated (£ 200,000)

13. Hoenig v. Isaacs (1952)

substantial performance, if ¾ of performance (+), quantum meruit

- plaintiff was employed by the defendant as a decorator and furniture designer
  - to decorate the defendant's flat and
  - to provide furniture, including a bookcase, a wardrobe and a bedstead
  - for the total sum of £ 750
- but: defendant only paid £ 400 b/c he found the work badly and faulty done
- **Court:**
  - there has been **substantial performance**
    - defendant is liable for £ 750 **less the costs of putting right** the listed defects
    - court here assessed £ 55 – defendant had to pay another £ 295

14. Bolton v. Mahadeva (1972)

lump sum = contract not divisible

- if there has been agreed on a lump sum *(Pauschalpreis)* the contract often is **not** held a divisible one

15. Hochster v. De La Tour (1853)

discharge of contract b/c of anticipatory breach, if express repudiation

- D agreed to engage H as a courier *(Reiseleiter)* for a European tour to commence on 1st June
- on 11th May D informed H that he no longer required his services
- plaintiff (H) sued for breach of contract on 22th May (for damages)
- defence: there was no cause of action until date due for performance
- **Court:**
  - D had broken his contract by **express repudiation**, and H could, because of this anticipatory breach of contract, bring an action **immediately**

16. Krell v. Henry (1903)

discharge of contract b/c of frustration (impossibility)

- defendant agreed to hire the plaintiff's flat
  - in order to watch the coronation of Edward VII.
- but: King was ill and procession was cancelled
- **Court:**
  - contract was **discharged b/c of frustration** and no rent was payable
    - b/c the primary purpose was to watch the coronation

17. R + B Customs Brokers Company Ltd. v. United Dominions Trust Ltd. (1988)

company can act as a consumer, if not integral part of business

- plaintiff company bought a second hand car for one of their directors
  - this car was to be used partly for business/partly for private motory
- price was paid through defendant's financing company
- part of that contract contained an exclusion clause
  - "when car leaked (lacked water) we can recover the price"
- car leaked - exclusion clause valid?
- **Court :**
  - car ist not fit for purpose *(not important)*
  - in considering the provisions of the Unfair Contract Terms Act 1977, which provide protection to those who "deal as consumer", the Court of Appeal held that that protection is only lost if the transaction is an **integral part of the business** carried on **or**, if only incidental thereto, is of a **type regularly entered into**
    - here: R + B bought only the second or third car – therefore buying cars is not an integral part of its business and R + B has to be classed as a consumer

IV. Law of Tort

1. Bradford Corporation v. Pickles (1895)

ill motive alone is not a tort

- Mr. Pickles wanted Bradford Corporation to buy his land at his own (high) price
  - Pickles dug a hole in his ground which stopped the water flow to the Corporation's water supply
- Corporation applied for an injunction
- **Court:**
  - injunction (-) (no injunction would lie) b/c Mr. Pickles had the **right to do so**
  - **it does not matter** that his **motive was ill**

2. Wilkinson v. Downton (1897)

good motive does not make committing a tort right

- defendant told the plaintiff, as a "practical joke", that her husband had asked him to tell her that he was lying with both legs broken following a serious accident
  - this statement was untrue
- the plaintiff believed the statement and suffered nervous shock and a number of physical consequences
- **Court:**
  - action in tort (+)
  - it is not relevant that the false statement was meant as a joke

3. Leigh v. Gladstones (1909)

tort – defences – necessity

- a suffragette (woman fighting for women's rights *Frauenrechtlerin*) went on hunger-strike in prison
- she was forced-fed by the guards
- she sued for assault and battery
- **Court:**
  - defence of necessity (+)
  - b/c death is greater evil than assault and battery

4. Stanley v. Powell (1891)

tort – defences – inevitable accident

- during a shooting for birds a bullet bounced off a tree and hit s.o. in his eye
- Powell liable for trespass (to Stanley's body)?
- **Court:**
  - this was an act of God
  - Stanley could not prove negligence
  - anything which occurs in the course of nature and what you cannot avoid: defence of **inevitable accident**

5. Vaughan v. Taff Railway Company (1860)

tort – defences – absolute statutory authority

- railway company was authorized by statute to run a railway which traversed the plaintiff's land
- sparks from the engine set fire to the plaintiff's woods
- **Court:**
  - railway company was not liable
  - it had taken all known care to prevent emission of sparks
  - the running of trains was **statutorily authorized**

6. Metropolitan District Asylum Board v. Hill (1881)

tort – defences – conditional statutory authority

- a hospital authority (appellants) were empowered by statute to build a hospital for contagious diseases
- the hospital was built in a residential district

  - caused danger of infection to people living nearby
- **Court:**
  - the building of the hospital was a nuisance
  - the statute gave the hospital authority to build such hospitals, but did not sanction the erection in places where this would constitute danger
  - injunction was granted
  - the statutory authority was **conditional**

7. R. v. Martin (2000)

tort – defences – self-defence (-), if other defences possible

- Martin = householder
- in the past often burglars attacked his house
- when he was burgled again, he shot the burglars – one 16-year-old boy died
- **Court:**
  - there were other defences
  - the force was **not reasonable**

8. Donoghue v. Stevenson (1932)

negligence – duty of care – definition

- a friend of the plaintiff:
  - bought from a retailer a bottle of ginger-beer manufactured by the defendant
- plaintiff:
  - drank from the bottle and
  - became ill from drinking
- bottle:
  - contained the decomposed remains of a snail
  - was opaque *(undurchsichtig)* so that the substance could not have been seen and was not discovered until the plaintiff was refilling her glass
- consumer:
  - sued the manufacturer in **negligence**
- **court** (House of Lords, Lord Atkin)**:**
  - the manufacturer was liable to the consumer in **negligence**
    - manufacturer not liable for contractual damages b/c there was no contract between plaintiff and manufacturer (her friend bought the bottle)
      - def. of **"duty of care"**:
        - …you must take care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour
          - **"neighbour":**
            - …persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are in question

9. Condon v. Basi (1985)

negligence – duty of care – standard of care depends on circumstances

- during a football match the defendant recklessly *(rücksichtslos)* tackled the plaintiff
  - broke his leg
- defendant:
  - was sent off by the referee
- **court:**
  - defendant was liable in negligence
    - the foul tackle fell **below the standard of care** which is reasonably expected in any match

10. McLoughlin v. O'Brian (1983)

negligence – duty of care (+), if accident is foreseeable

- defendant:
  - drove in a negligent way
  - accident happened b/c of the negligence
    - one child dead, rest of the plaintiff's (mother) family injured

- **court:**
  - defendant was liable
    - defendant owed duty of care
    - accident was foreseeable

11. Yachuk v. Oliver Blais Co. (1949)

negligence – standard of duty of care – depends on circumstances

- boy (nine years):
  - lied to a garage attendant, asked him to give him a tin of petrol for his mother's car
  - but he used it to play (light some timber)
    - caused an explosion
      - boy injured
- **court:**
  - defendant was liable
    - garage attendant was negligent, he owed great duty of care b/c the oil is very dangerous and the person he gave it to was a child

12. Smith & Others v. Littlewood Organisation Ltd. (1987)

negligence – duty of care (-), if third parties act

- Vandals started fire in the defendant's empty building which damaged near property
- **court:**
  - occupier's duty **did not** extend to preventing **deliberate acts** of third party vandals in these circumstances

13. Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd. (1964)

negligence – duty of care (+), if other person relies on you as expert

- plaintiffs:
  - contacted bankers (defendants) b/c of references of a company (of credit-worthiness)
- H & B:
  - gave a positive report
    - the report was headed by: "No responsibility!"
- but afterwards the company got bankrupt
- **court:**
  - bankers would have been liable if they had not expressly excluded liability in the contract
  - where in a sphere in which a person is so placed that others could reasonably rely on his judgment or his skill or on his ability to make careful inquiry, a person takes it on himself to give information or advice to be passed on to, another, who, as he knows or should know, will place reliance on it, then a duty of care will arise (per Lord Morris)

14. Caparo Ind. v. Dickmann (1990)

negligence – duty of care (-): auditors – shareholders

- **court:**
  - the auditors *(Rechnungs-/Abschlussprüfer)* did not owe a duty of care in negligence to either a shareholder or a potential shareholder

15. Cassidy v. Daily Mirror Newspapers Ltd. (1929)

libel – defamatory statement (+), if innuendo – despite innocent motive

- defendant published photograph of a man and a woman
  - underneath it said: "Mr. C and Ms. B whose engagement has been announced"
  - in fact Mr. C was already **married** with Mrs. C
- Mrs. C took defendant to court for libel
  - b/c words suggested by **innuendo** that she lived immoraly together with Mr. C
- **court:**
  - Mrs. C succeeds
    - damages (+)
    - although defendant has acted **innocently**

16. Newstead v. Express Newspaper Ltd. (1940)

libel – statement referred to plaintiff (+), if you can be identified personally

- defendant published report of a court trial and conviction of bigamy of s.o. called Harold Newstead
  - but there was also another man with the same name who lived in the same area
- **court:**
  - plaintiff is entitled to damages

17. Vize Telly v. Mudie's Select Library (1900)

libel – statement was published (+) – repetition is no defence

- a book contained a libel
- defendants (librarians) had copies of that book in library
  - but: they did not know of the libel in the book and
  - no negligence (it was no fault of their own that they did not hear that the publisher of the book wanted it to be returned b/c of the libel)
- **court:**
  - nevertheless the librarians are liable
    - b/c they passed the book on (to the lenders)

18. O'Connor v. Swan & Edgar and Carmichael Contractors (1963)

occupiers' liability – occupier has discharged the duty of care, if he reasonably and carefully chose independent contractors to do the work and work is badly done

- plaintiff: was working as a demonstrator in a store
  - part of the ceiling fell, injured her (plaintiff)
    - plaintiff sued:
      - store owners
      - plasterers (independent contractors)
- **court:**
  - store owners: not liable
  - plasterers: liable of faulty workmanship

19. Glasgow Corporation v. Taylor (1922)

occupiers' liability – children – special care/effective warning, if allurement on premises

- child (7 years):
  - picked some attractive, but poisonous, berries (growing on a **public park**)
    - child died
- defendant (coporation – order mixed up b/c appeal!):
  - knew the berries were poisonous
  - knew that children play in park
  - but:
    - corporation had done no effective warning (warning that is understandable) of the danger
- **court:**
  - berries constituted an allurement
    - corporation was liable in an action by the child's parent

20. Cook v. Midland G.W. Railway of Ireland (1909)

occupiers' liability – children – special care/effective warning, if allurement on premises

- defendants:
  - kept a turntable on their land near a public road
  - knew that children come on the land and play with the turntable
  - but:
    - defendants took no effective steps to prevent them doing so
- child (4 years):
  - injured himself on the turntable

- **court:**
    - sufficient evidence to find the defendants liable
    - they had acquiesced in (put up with *dulden*) the trespasses by the children
        - the particular child was in the position of a visitor
        - to him the turntable was an allurement

21. B.R. Board v. Herrington (1972)

occupiers' liability – children – children = visitors, if way to premises is "left open" (i.e.: hole in fence is not repaired)

- Herrington (6 years):
    - trespassed through a **defective fence** adjoining an electrified railway line
        - was badly injured
    - sued the Board in **negligence** for **permitting** the fence to be in a bad condition
- Board:
    - knew that previous trespasses had occurred
- **court:**
    - Board was liable
    - an occupier's liability to a child trespasser depends on what a conscientious, humane man (with his knowledge, skill, and resources) could reasonably have been expected to have done or refrained from *(unterlassen)* doing which would have avoided the accident
        - by the way: a poor person would often be excused where a large organization would not (per Lord Reid)

22. Rylands v. Fletcher (1868)

occupiers' liability – strict liability (negligence (-))

- defendant:
    - employed independent contractors to construct a reservoir on his land and to use the water power for his mill
    - contractors:
        - came across some disused mine-shafts and passages filled with earth and marl which communicated with the plaintiff's mine
            - this fact, however, was **unknown** to defendant and contractors
- when reservoir was filled, the water escaped through the shafts and flooded the plaintiff's mine
- **court:**
    - defendant **had not been negligent**
    - nevertheless:
        - defendant was liable (firstly stated by Court of Exchequer, secondly confirmed by House of Lords (appeal))
    - **House of Lord:**
        - restricted the rule to damage due to a non-natural use of the land