

# **Tort Law and Mass Transportation Accidents**

## **A French-German View on Legal Challenges in Times of Market Liberalisation**

Jonas Knetsch

## Introduction



Railway Strike in France  
(Photo: 3 April 2018)

## Introduction

- Liberalisation of EU Transport Markets
- Major Impact of EU Law on National Transportation Law (including Tort Regulations)
- But: Non-contractual Liability towards Third Persons: National Tort Law
- Special Feature of French Law: Principle of *non-cumul*





## **Introduction**

- Focus: Railway and Coach/Bus Liability

### **I. The Tightening of Strict Liability Regimes**

### **II. The Impact of Separating Network and Operations on Tort Law**

## I. The Tightening of Strict Liability Regimes

<b>Liability of Coach/Bus Carrier</b>		
Legal basis	Badinter Act 1985	§ 7 Street Traffic Act (StVG)
Grounds of Liability	Involvement (implication) of Motor Vehicle	Harm arising from the Operation of a Motor Vehicle
Liable Persons	Custodian or Driver	Custodian (Halter)
Grounds of Exemption	Force majeure, Contributory Negligence (very rare, except for drivers)	
Compensation Procedure	Compensation Offer via Vehicle Insurer	Compensation Offer via Vehicle Insurer


## I. The Tightening of Strict Liability Regimes

### *A. The Extension of the Scope of Badinter Act*




- Application of Badinter Act to Coach or Bus Accidents
  - *Very Little Relevant Case-Law*
  - *Claimant-friendly Compensation Conditions*

## I. The Tightening of Strict Liability Regimes

	Liability of Coach/Bus Carrier	Liability of Railway Carrier
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## I. The Tightening of Strict Liability Regimes

	Liability of Coach/Bus Carrier	Liability of Railway Carrier
<b>Legal basis</b>	Badinter Act 1985	Art 1242 (1) Civil Code (Liability for Things)
<b>Grounds of Liability</b>	Involvement ( <i>implication</i> ) of Motor Vehicle	<i>Fait d'une chose</i>
<b>Liable Persons</b>	Custodian or Driver	Custodian
<b>Grounds of Exemption</b>	<i>Force majeure</i> , Contributory Negligence (very rare, except for drivers)	Force majeure, Contributory Negligence
<b>Compensation Procedure</b>	Compensation Offer via Vehicle Insurer	Ordinary Procedure



## I. The Tightening of Strict Liability Regimes

### A. *The Extension of the Scope of Badinter Act*



- 2017 Draft of Civil Liability Reform

#### Art 1 Badinter Act

The provisions of this chapter shall apply to injured persons – even if they are carried under a contract – in the case of traffic accidents in which a motorized land-borne vehicle [...] is involved **with the exception of railways and trams travelling on their own tracks.**

#### Art 1285 (2017 Draft)

The driver or custodian of a motorized land-borne vehicle is strictly liable for a harm caused in a traffic accident in which his vehicle [...] is involved.

The provisions of this chapter are mandatory and apply even when the victim are carried under a contrat.

## I. The Tightening of Strict Liability Regimes

### *A. The Extension of the Scope of Badinter Act*



- 2017 Draft of Civil Liability Reform
  - *Objectives of the Extension*
  - *Unique Liability Regime for all Railway Accident Victims*
  - *But: Is a Full Transposition to Railways Adequate?*

## I. The Tightening of Strict Liability Regimes

### *B. The Decline of the force majeure defence*



#### ■ Until 2002 Reform

- *Exemption of a Motor Vehicle's Custodian or Tramway Carriers in case of an 'unavoidable event' (unabwendbares Ereignis)*
- *Proof of Negligence of the Victim + Compliance with Duty of Care*
- *For Railway Carriers: Only force majeure defence*


## I. The Tightening of Strict Liability Regimes

### *B. The Decline of the force majeure defence*



- Since 2002 Reform
  - *Motor Vehicle, Railway or Tramway Accidents: Only force majeure defence*
  - *Very Strict Interpretation of force majeure*
    - *Naturel Events: no*
    - *Suicide (Attempt) or Self-mutilation: yes*
    - *Interferences from Third Parties: no*

## I. The Tightening of Strict Liability Regimes

	Liability of Coach/Bus Carrier	Liability of Railway Carrier
Legal basis	§ 7 Street Traffic Act (StVG)	§ 1 Strict Liability Act (HaftpflG)
Grounds of Liability	Harm arising from the Operation of a Motor Vehicle	<i>Fait d'une chose</i>
Liable Persons	Custodian ( <i>Halter</i> )	Railway Operator
Grounds of Exemption	Since 2002: only <i>force majeure</i>	Since 2002: only <i>force majeure</i>
Compensation Procedure	Compensation Offer via Vehicle Insurer	Ordinary Procedure


## I. The Tightening of Strict Liability Regimes

### *B. The Decline of the force majeure defence*



- Since 2002 Reform
  - *Motor Vehicle, Railway or Tramway Accidents: Only force majeure defence*
  - *Very Strict Interpretation of force majeure*
  - *Comparison with the force majeure concept under French law*

## I. The Tightening of Strict Liability Regimes

	Liability of Coach/Bus Carrier	Liability of Railway Carrier
<b>Legal basis</b>	Badinter Act 1985	Art 1242 (1) Civil Code (Liability for Things)
<b>Grounds of Liability</b>	Involvement ( <i>implication</i> ) of Motor Vehicle	<i>Fait d'une chose</i>
<b>Liable Persons</b>	Custodian or Driver	Custodian
<b>Grounds of Exemption</b>	<i>Force majeure</i> , Contributory Negligence (very rare, except for drivers)	Force majeure, Contributory Negligence
<b>Compensation Procedure</b>	Compensation Offer via Vehicle Insurer	Ordinary Procedure

## **Introduction**

- Focus: Railway and Coach/Bus Liability

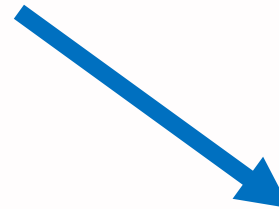
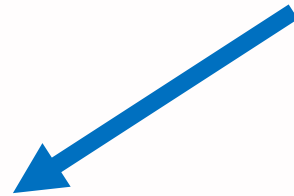
### **I. The Tightening of Strict Liability Regimes**

### **II. The Impact of Separating Network and Operations on Tort Law**



## II. The Impact of Separating Network and Operations

Historical State-owned Railway Carriers



**Network /  
Infrastructures**

**Operations**



## **II. The Impact of Separating Network and Operations**

- Transportation Markets impacted by the Separation of Network and Operations: Railway, Air, Road (?)
- Consequences on Tort Law
  - A. The Liability of Both Infrastructure and Transport Companies*
  - B. The Articulation of the Liability of Infrastructure and Transport Companies*

## II. The Impact of Separating Network and Operations

### *A. The Liability of Infrastructure and Transport Companies*

- Railway Accidents under German Law (§ 1 Strict Liability Act)
  - *Liability of the 'railway operator'*
  - *BGH (2004): railway carrier and infrastructure company*
  - *Liability of both in all cases of railway accidents?*
  - *Distinction between infrastructure-related and transport-related operating risks?*

## II. The Impact of Separating Network and Operations

### *A. The Liability of Infrastructure and Transport Companies*

- Railway Accidents under French Law (Art 1242 (1) CC)
  - *Infrastructure Company: Public Body → State Liability Before Administrative Courts*
  - *Identification of a 'thing' that caused the accident or an 'exceptionally dangerous transportation facility'*
  - *2017 Draft: no changes expected*

## II. The Impact of Separating Network and Operations

### *B. The Articulation of Infrastructure and Transport Companies' Liability*

- Solidary Liability (*obligation in solidum* or *Gesamtschuld*)
- Apportionment of Liability between the Tortfeasors
  - Principle: Equal Shares (*per capita*)
  - § 13 Strict Liability Act: Tortfeasors' Respective Contributions to Accident (*see* BGH case-law)
  - Problem: Cases with Foreign Railway Carriers
  - Problem: Air or Road Transportation