



Scandinavian Strict Liability Solutions

Bjarte Askeland

UNIVERSITETET I BERGEN





Historical background

- Late 19th century case law: Liability for «dangerous activity»
- **General rule** – stretching the culpa rule
- Requisites: «**Continuous, typical** and **extraordinary risks**»



1950
Elevator fall

General rule

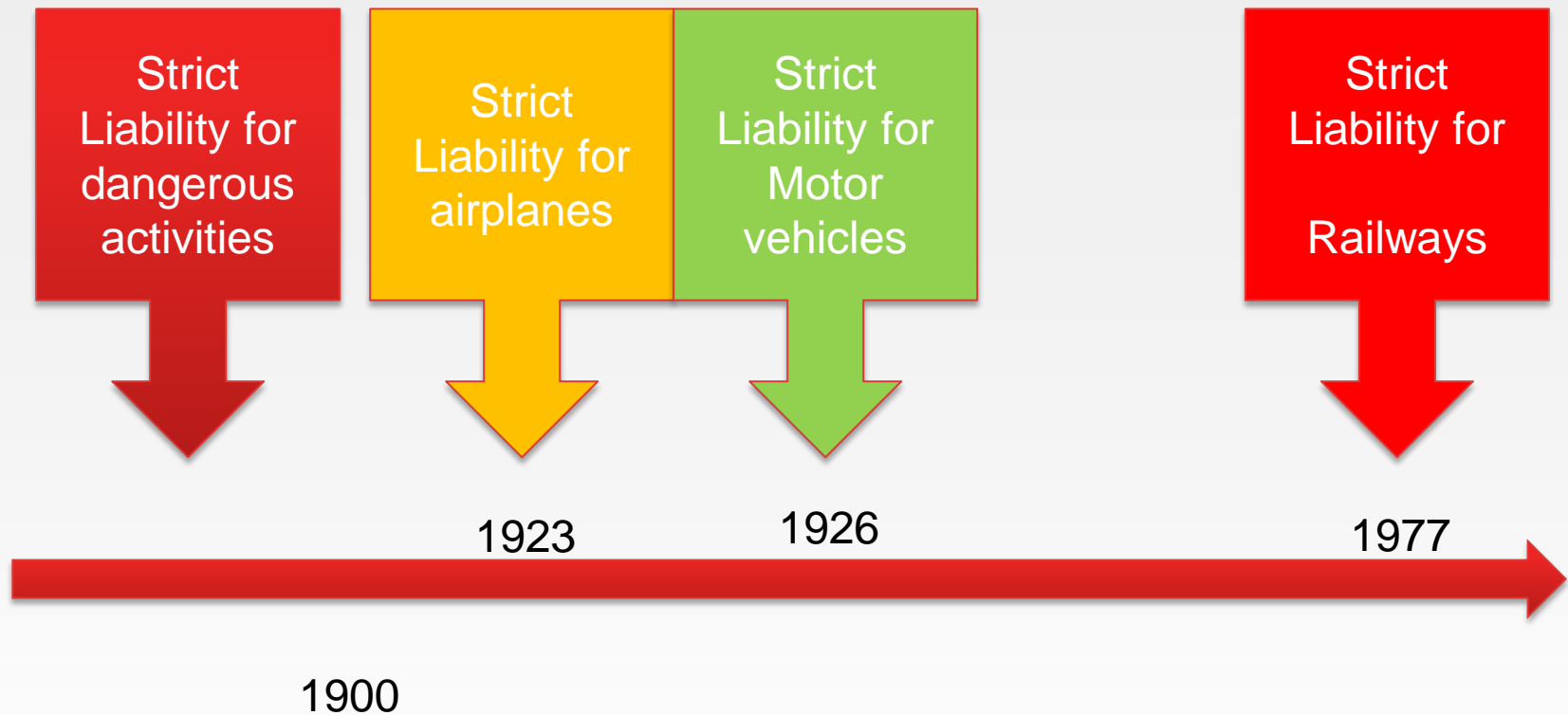


Defect steering mechanism
1916





Historical background





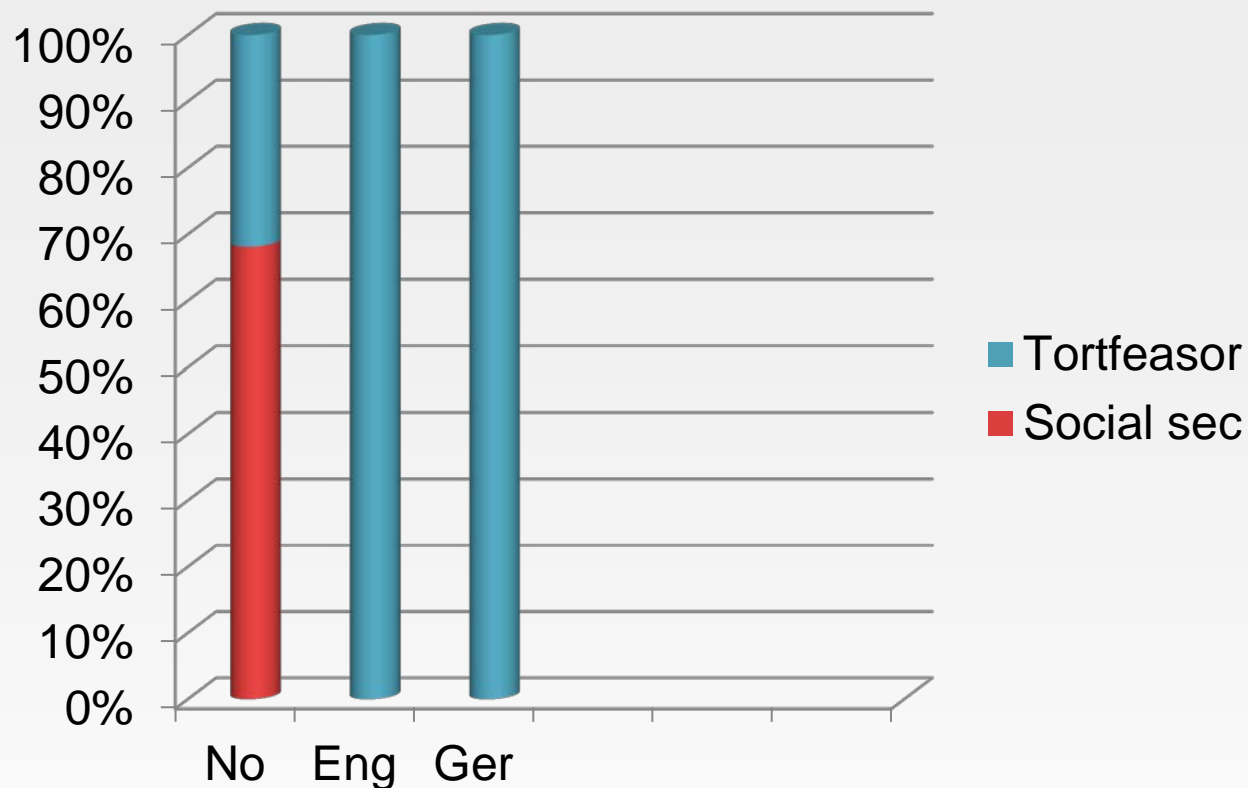
The «Nordic model»

- **High level of social security** coverage
- **«First party insurance»** through the tax bill





Social security covers the greater part of **loss of income**. **No recourse action against tortfeasor**.



This simplistic picture may be **moderated** by the English system of **recourse claims** from the National Health Service





The «Nordic model»

- **High level of social security** coverage
- «**First party insurance**» through the tax bill
- **Mandatory insurance** schemes in many areas

FUN FAIR ACT 1991



OCCUPATIONAL LIABILITY 1989



EU-regulations: "Minimum awards" (preventing caps)



181/2011:art. 7 no. 2
PI: €220,000
Luggage: €1,200



1371/2007 App 1 art. 30
P.I: €207,000



No minimum

Personal injuries



Strict liability
No cap



Strict liability
No cap



Strict liability
No cap



However, carrier may exonerate himself for liability exceeding 100 000 SDR = € 117,700 (Montreal Convention art. 17)

Damage to luggage



No cap

Cap € 5,000

Cap € 1,331

Damage to third party – goods

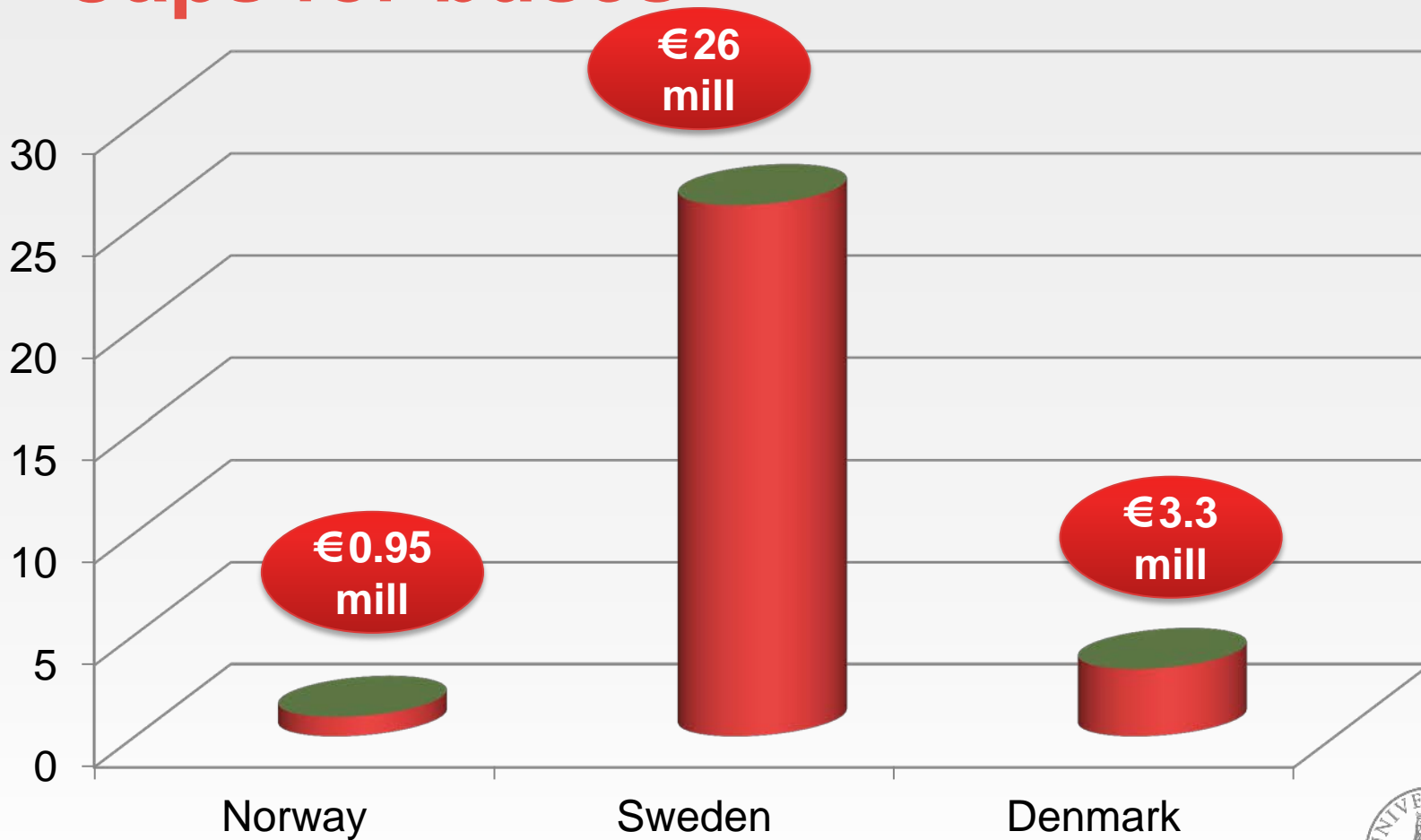


**Cap:
€0.95 mill**





Caps for buses



Damage to third party – goods



**Cap:
€0.95 mill**

No cap

No cap



Compensation for non-pecuniary loss



Negligence:

No liability



No liability



Liability (!)



Norwegian general rule:

Compensation for pain and suffering
Only in case of **gross negligence** or
Intent.

Walz v. Clickair
C- 63/09:

Norwegian air traffic
Act § 10-21 interpreted
in the light of ECJ and
Montreal Convention



EU impact on Norwegian Tort Law



Complaint board 2016:
Air hostess spilling hot
tea on a boy's lap:

Non-pecuniary
loss: € **500**



Non-pecuniary loss also in ordinary **negligence** cases

Contributory negligence



More than slight negligence



More than slight negligence

International flights



All kinds of negligence

Domestic flights:



All kinds of negligence, but leniently interpreted.



EU Regulation 889/2002 art. 1

- This Regulation implements the relevant provisions of the **Montreal Convention** in respect of the carriage of passengers and their baggage by air and lays down certain supplementary provisions. It **also extends** the application of these provisions to carriage by air **within a single Member State**.



**Imputed
Contributory negligence
Fatal accidents**



More than slight negligence

No reduction unless **gross** negligence



More than slight negligence

No reduction unless **gross** negligence

International flights



All kinds of negligence

Reduction **in proportion** to negligence

Domestic flights:



All kinds of negligence

No reduction unless **gross** negligence

Preparatory works/cases: «The dependent's claim stands **on its own feet**»

Montreal Convention art. 20: «exonerated ... **to the extent**»



Summing up

- Scandinavian strict liability solutions are relatively **generous** to victims
- **Tensions** between international and national solutions regarding airplane accidents.

