



Legal risk management

Tobias Mahler,
Norwegian Research Center for Computers and Law
The faculty of Law
University of Oslo



Agenda

- Introduction
- Risk management
- Legal risk management
- A real-life example
- Graphical modelling of legal risk



Introduction

Richard Susskind, *The Future of Law*:

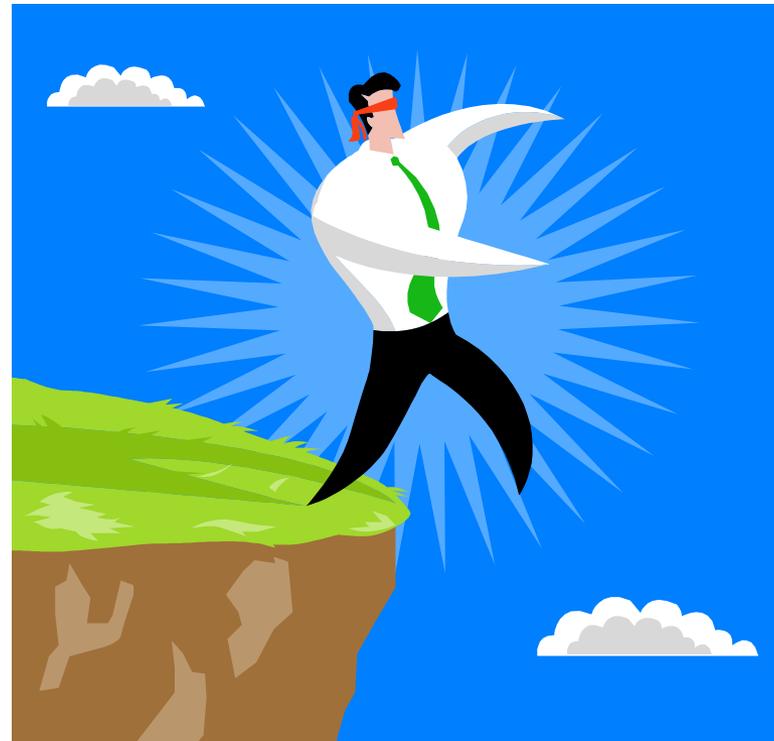
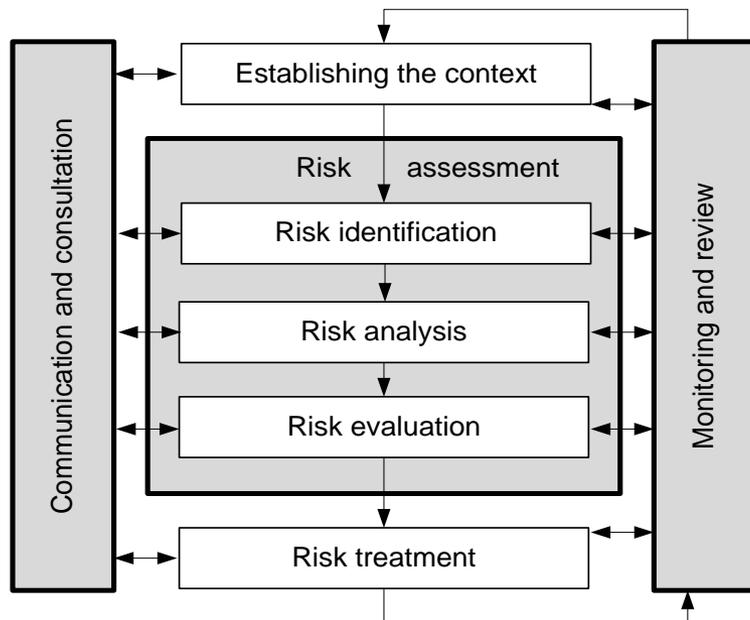
- “While legal **problem solving** will not be eliminated in tomorrow’s legal paradigm, it **will** nonetheless **diminish** markedly in significance.
- The emphasis will shift towards **legal risk management** supported by **proactive** facilities, which will be available in the form of legal information services and procedures.
- As citizen **learn** to seek legal guidance more **regularly and earlier** than in the past, many potential legal difficulties will be dissolved before needing to be resolved.
- Where legal problems of today are often symptomatic of delayed legal input, **earlier** consultation should result in users
 - **understanding and identifying their risk** and
 - **controlling** them before any questions of escalation.”



Risk management

What is risk management?

ISO 31000:2009



Risk matrix

RISK MATRIX		CONSEQUENCE VALUES				
		Insignificant	Minor	Moderate	Major	Catastrophic
LIKELIHOOD VALUES	Very likely	Medium	High	High	Very high	Very high
	Likely	Medium	Medium	High	High	Very high
	Possible	Low	Medium	Medium	High	High
	Unlikely	Low	Low	Medium	Medium	High
	Rare	Low	Low	Low	Medium	High



Who does risk management in an enterprise?

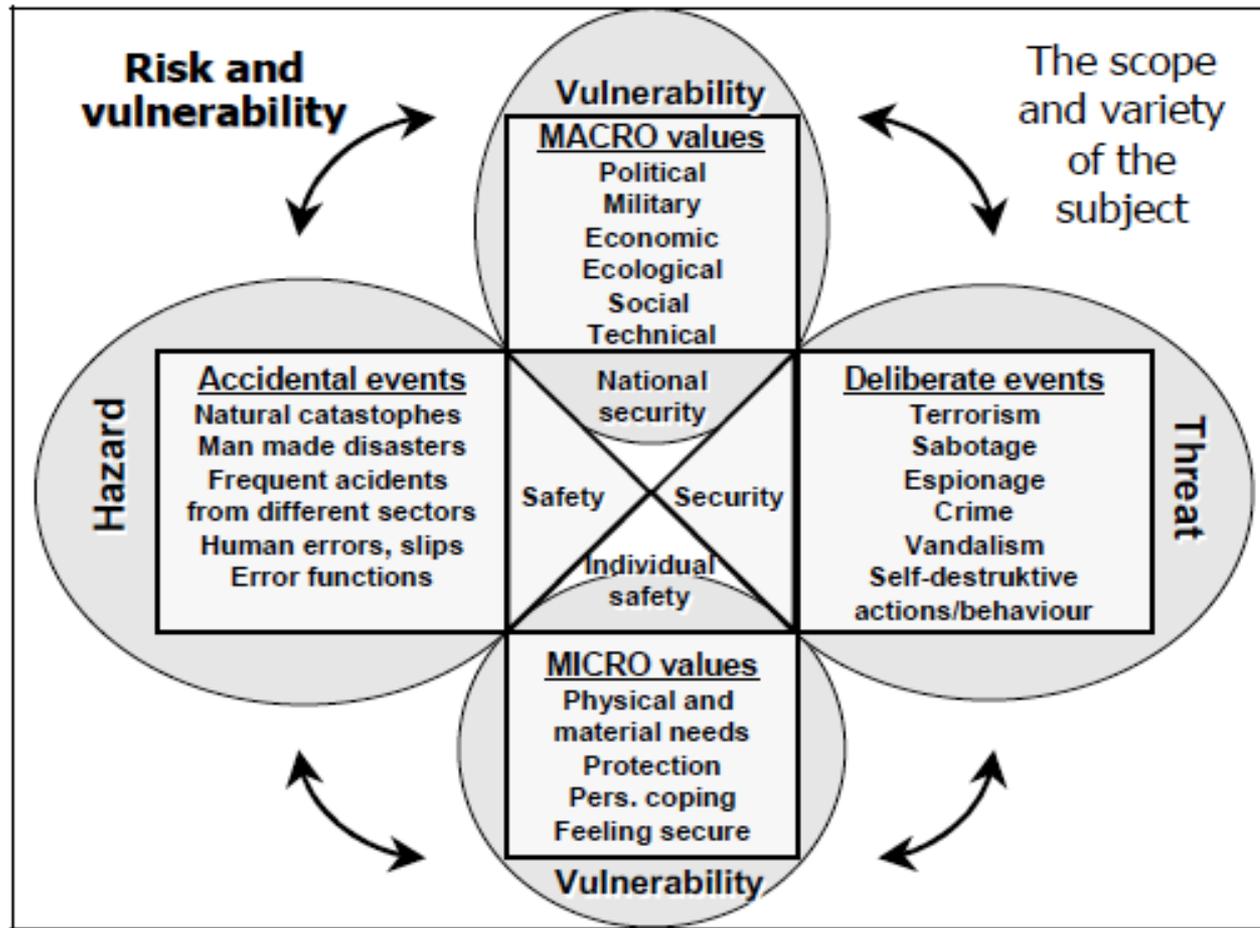
- Board of directors/CEO: enterprise risk
- Chief risk officer (CRO)/chief finance officer (CFO): financial risk
- Product developers (e.g. engineers): product risk
- Safety officer: risk related to health/environment/safety
- Project managers: project risk
- IT system engineers: IT security risk
- Compliance officer: compliance risk
- General Counsel (Legal): Legal risk?



Risk and uncertainty

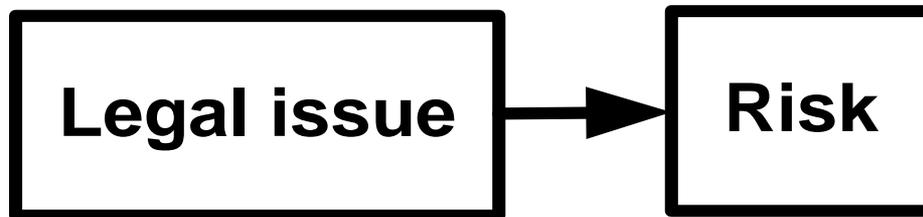
- Risk is the effect of uncertainty on objectives.
 - ISO 2009
- Uncertainty is deficiency of information related to or understanding or knowledge of an
 - event,
 - its consequence or
 - likelihood.
- Uncertainty about
 - Facts
 - Legal norms

The technical risk perspective



Legal risk

- A legal risk is a risk that has a legal issue as its source



- A legal issue is a set of facts that are assessed under a set of legal norms.



UNIVERSITY
OF OSLO

Legal risk management



Legal risk management

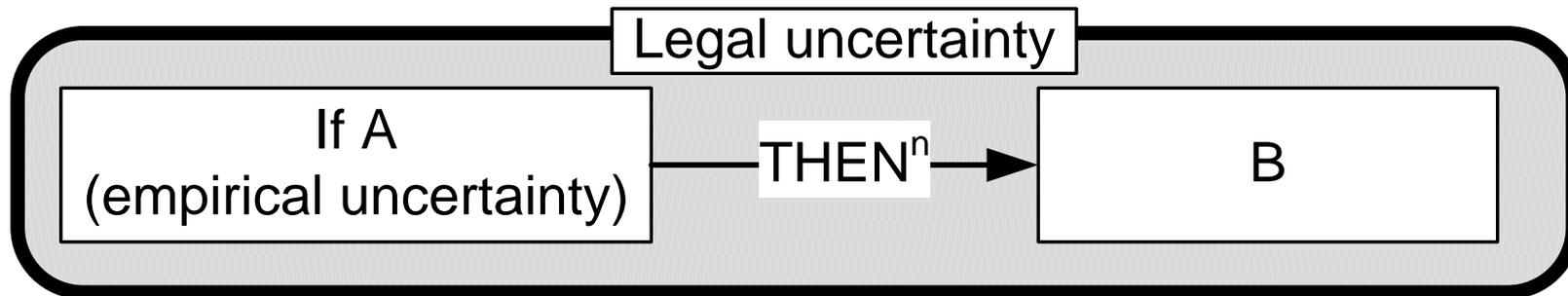
Legal risk management focuses on

- the management of legal risk and
- the legal management of risk.

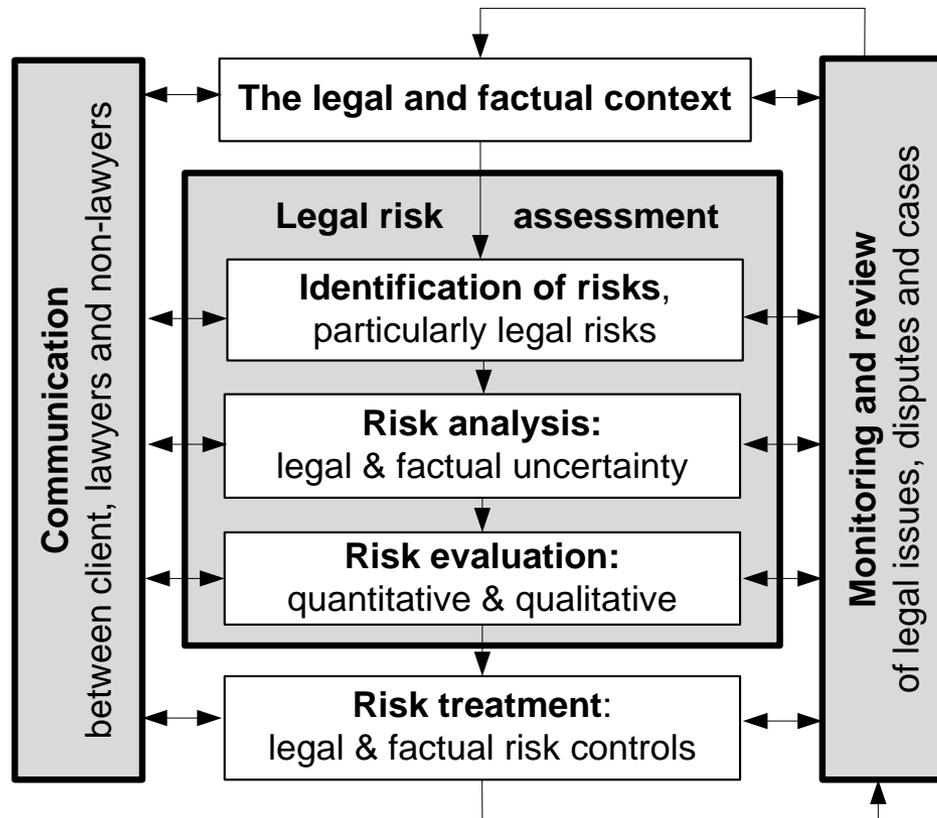
Topics in legal risk management



Empirical and legal uncertainty



Legal risk management process





A real-life example

A real-life example: SAP

Risk Nr.	Event	Effect on	Legal sources	Likelihood	Consequence	Risk value
1	Product defect claims	SAP results	Contract ProdHG BGB	Unlikely	Significant	Medium
2						
3						

Risk description I (uncertainty about facts)



Risk title (SAP: “product risk”)

- Risk of actual or alleged failures of our software products and services.

Description of facts/events

- New products and product enhancements may still contain undetected errors when they are first released.
- As a result, it is feasible that certain customers may bring claims in certain cases for cash refunds, damages, replacement software, or other concessions.
- SAP software products are chiefly used by customers in business-critical applications and processes. □

- **Source:** SAP, *IFRS FINANCIAL REPORTS* (2007), p. 56

Risk description II (uncertainty about legal norms)

Description of the law/contract

- Our contractual agreements generally contain provisions designed to limit SAP's exposure to warranty-related risks.
- However, these provisions may not cover every eventuality or be entirely effective under applicable law.
- **Source:** SAP, *IFRS FINANCIAL REPORTS* (2007), p. 56

Risk description III (effect & estimation)



Effect on SAP's objectives

- Such claims could adversely affect our assets, finances, income, and reputation.

Risk estimation

- We believe it is
 - unlikely that our planned results will be
 - significantly impaired by product defect claims from SAP customers.

- **Source:** SAP, *IFRS FINANCIAL REPORTS* (2007), p. 56

Risk description IV (treatment)



- We counter these risks with
 - thorough project management,
 - project monitoring,
 - rigid and regular quality assurance measures certified according to ISO 9001, and
 - program risk assessments during product development.
 - **AND CONTRACTUAL MEASURES**
- **Source: SAP, IFRS FINANCIAL REPORTS (2007), p. 56**

Risk description V (monitoring)

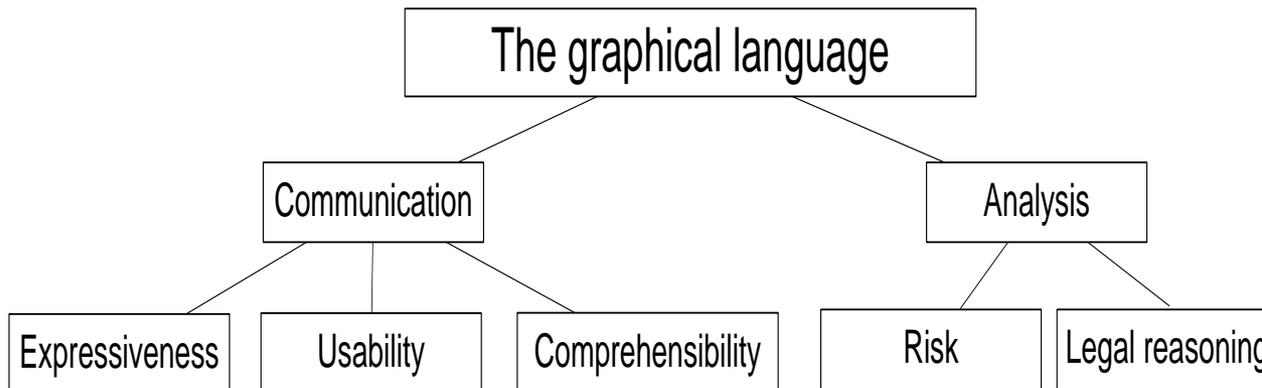


- The generally high quality of our products is confirmed by
 - our low customer escalation handling expenses (as described in the Project Risks section),
 - the low rate of litigation arising against us out of our regular operations,
 - and our constantly high customer satisfaction ratings as measured by regular customer surveys.
- **Source:** SAP, *IFRS FINANCIAL REPORTS* (2007), p. 56

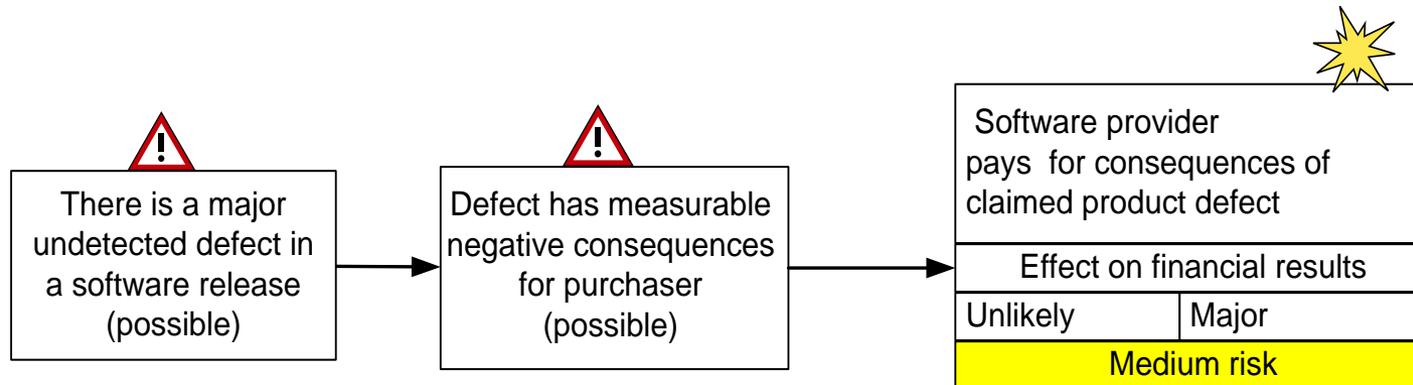


Graphical modelling of legal risk

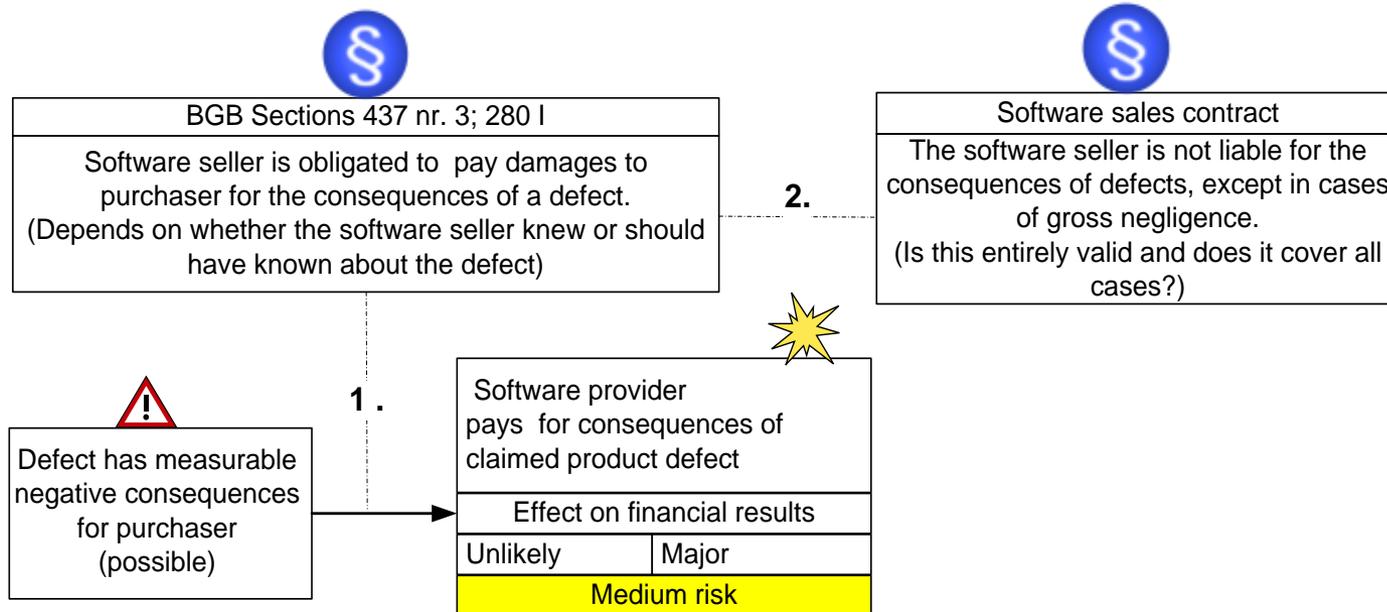
Why visualisation?



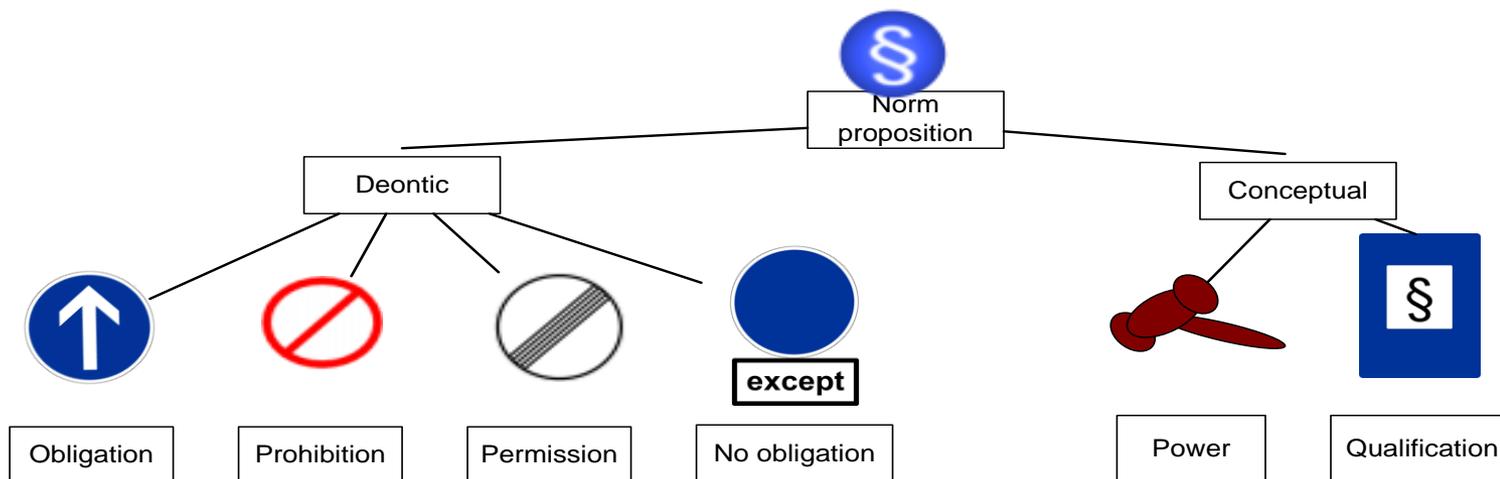
Facts lead to risk



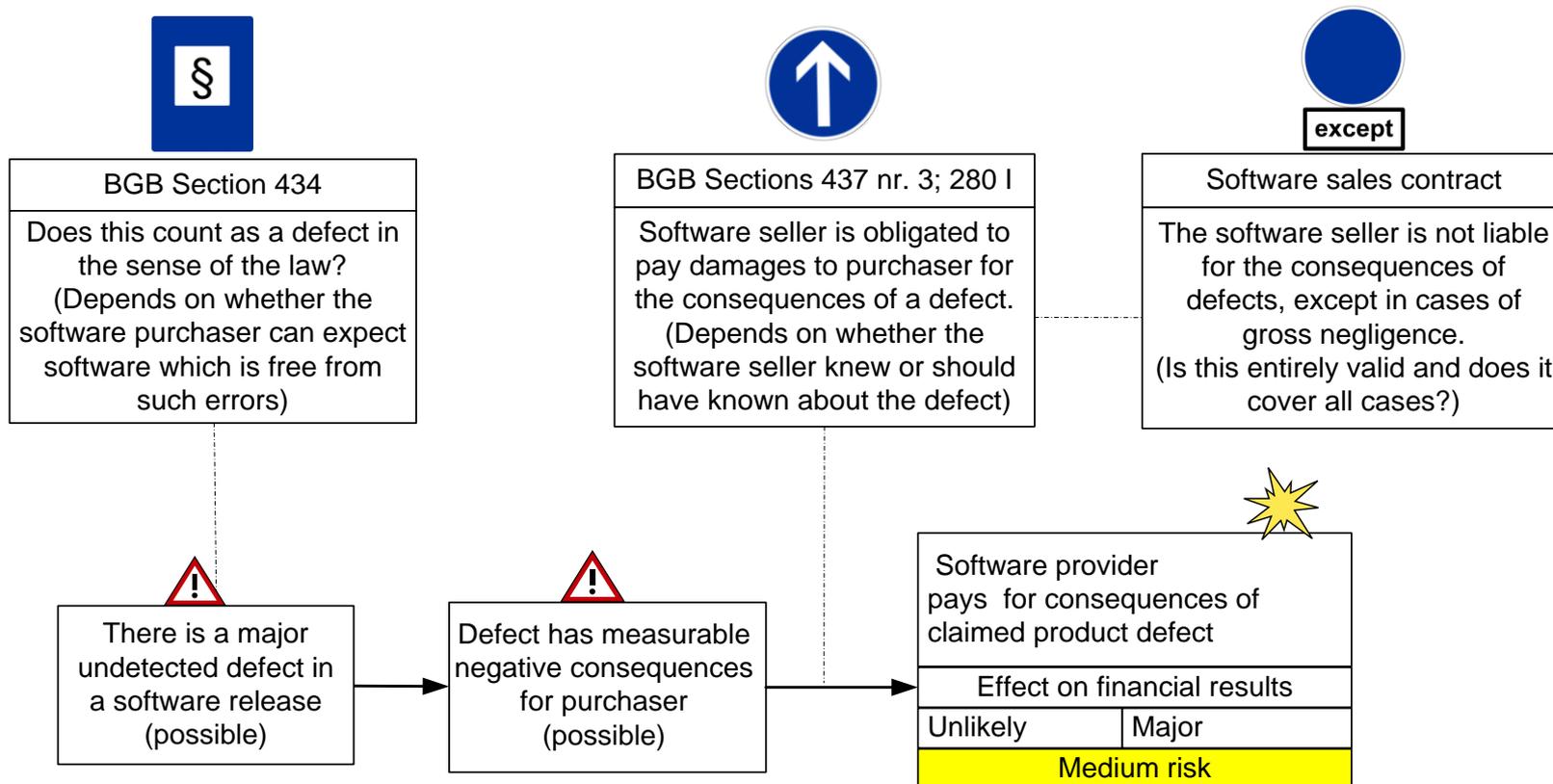
Legal norms contribute to risk



Different types of norms



Visualisation of initial example





Concluding remarks

- Visualisation was used in large-scale industrial case study
- Risk management can be applied in a legal context, but only as a complement to existing methods